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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JUDITH ALLEN, *et al.*,

Plaintiffs,

vs.

GIRARDI | KEESE, *et al.*,

Defendants.

Case No.: 14-CV-02721-MWF-FFM

**JOINT STIPULATION RE:
PLAINTIFFS' MOTION TO
COMPEL FURTHER RESPONSES
BY DEFENDANT GIRARDI | KEESE
TO PLAINTIFFS'
INTERROGATORIES, SET ONE
AND FOR MONETARY SANCTIONS**

**[PLAINTIFFS' DISCOVERY
MOTION NO. 5]**

[Notice of Motion; Declaration of John Sheehan; and Declaration of Paige Shen filed concurrently herewith]

Judge: Hon. Fredrick F. Mumm
Date: October 27, 2015
Time: 10:00 a.m.
Room: E, 9th Floor

Complaint Filed: Apr. 9, 2014
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Trial Date: Feb. 2, 2016

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RESPONSES TO INTERROGATORIES AND FOR SANCTIONS**

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I. PLAINTIFFS' INTRODUCTION.

Plaintiffs seek an order compelling Defendant Girardi | Keese ("GK") to provide complete and non-evasive answers to twelve interrogatories (the "Interrogatories") in Plaintiffs' Interrogatories, Set One ("Set One"). Plaintiffs also ask the Court to impose appropriate sanctions for GK's continuing discovery abuses.

A. Nature of the Case.

Plaintiffs are 29 elderly women (or the representatives of their estates) ("Plaintiffs") who developed breast cancer after taking hormone replacement therapy ("HRT") prescription medications. Defendants are the law firm of Girardi | Keese and two of its partners, attorneys Thomas Girardi and James O'Callahan (collectively, "Defendants"). GK represented Plaintiffs, together with another 110 similarly situated victims (collectively, the "HRT Claimants"), in individual personal injury actions against the manufacturers of the HRT medications, which became part of a federal multi-district litigation proceeding in the Eastern District of Arkansas (the "HRT Litigation"). Declaration of John Sheehan ("Sheehan Decl."), ¶ 3.

The present case arises out of a scheme by Defendants to misappropriate millions of dollars in settlement funds belonging to the HRT Claimants. After negotiating an aggregate settlement of their clients' claims in the HRT Litigation, Defendants misappropriated the proceeds through various dishonest and unethical means. **First**, Defendants paid themselves a 40% contingency fee, even though they did not have a written retainer agreement with any of the HRT Claimants, and therefore were, at most, entitled to *quantum meruit*. **Second**, Defendants withdrew settlement funds held in trust for the HRT Claimants without the clients' consent or knowledge, which is per se willful misappropriation under California law. **Third**, Defendants paid themselves substantially in excess of 40% of the settlement by secretly pocketing \$1.0 million of the settlement funds. **Fourth**, Defendants charged their clients for fictitious costs and costs that were excessive, unreasonable and unrelated to the case. **Fifth**, Defendants charged clients twice for work performed in

1 the litigation, once as costs and then again as included in their attorney's fees.

2 *Sixth*, Defendants enjoyed the free use of the settlement funds, delaying distribution
3 of the final settlement payments for three years by use of deception and lulling tactics.

4 To carry out and conceal their scheme, Defendants made numerous false
5 representations to the HRT Claimants, and withheld material information in violation
6 of their ethical and fiduciary duties of disclosure. Additionally, Defendants refused to
7 produce a complete and accurate accounting of the disposition of the settlement
8 proceeds, despite repeated requests by Plaintiffs and in violation of their legal duty to
9 do so. Moreover, the limited information that Defendants have provided in this
10 litigation has proven to be inaccurate, unsubstantiated and, in many instances, false.
11 As a result, Plaintiffs still do not know the full extent of Defendants' wrongdoing or
12 the disposition of their settlement funds.¹

13 **B. Nature of This Discovery Dispute.**

14 Plaintiffs ask the Court to compel further responses to twelve interrogatories
15 that were part of Set One. Interrogatories 3-6 seek specific information relating to
16 GK's receipt and disbursement of the Settlement Funds, including the transactions
17 involved in making the Initial, Second and Third Payments to the HRT Claimants.
18 Interrogatories 7-13 seek information relating to the nature and extent of services
19 provided by Justice Panelli and other vendors who were paid from the Settlement
20 Funds and the details of the \$850,000 in purported litigation costs that GK charged to
21 the HRT Claimants. Finally, Interrogatory 15 is a standard contention interrogatory,
22 which requests information relating to the bases for GK's affirmative defenses as
23 asserted in Defendants' Answer.

24 As discussed in detail below, GK's vague and cursory responses to
25 Interrogatories 3-13 were effectively no responses at all; they were incomplete and
26

27 ¹ The factual background, procedural history and prior instances of Defendants'
28 discovery abuses in this litigation are more fully recounted in the attached Declaration
of John Sheehan. Sheehan Decl., ¶¶ 3 – 17.

1 evasive and therefore “***must be treated*** as a failure to . . . answer.” Fed. R. Civ. P.
2 37(a)(4) (emphasis added). GK has refused altogether to answer Interrogatory 15.
3 And GK has refused to verify its answers under oath, as required by the Federal Rules.

4 GK’s responses were served well beyond the statutory deadline, and therefore it
5 waived all of its objections to each interrogatory. *See* Fed. R. Civ. P. 33(b)(4). In
6 recently overruling GK’s objections to Plaintiffs’ second set of interrogatories and
7 granting their motion to compel, this Court concluded: “Plaintiff correctly asserts that
8 by responding late to the interrogatory, defendant has waived its objections.
9 Defendant has provided no excuse whatsoever for failing to timely respond to the
10 interrogatory or at least request an extension of time within which to do so.”
11 Dkt. No. 128, p. 2. The same can be said here. Beyond waiver, all of GK’s objections
12 are demonstrably meritless and, in many instances, frivolous. Accordingly, the Court
13 should overrule all of GK’s objections and order GK to provide complete and non-
14 evasive answers forthwith.

15 In addition, Plaintiffs should be awarded their attorney’s fees for having to
16 bring this motion – their fifth motion to compel in this case. *See* Fed. R. Civ.
17 P. 37(a)(5)(A). The record before this Court makes clear that Defendants are engaged
18 in an egregious pattern of discovery abuses that includes deliberate disregard of their
19 discovery obligations, willful violations of court orders, and the failure to meet and
20 confer or to meet and confer in good faith, which has resulted in Plaintiffs having to
21 litigate virtually every one of their discovery requests.² Sanctions are entirely
22 appropriate in such circumstances. *See Roadway Exp., Inc. v. Piper*, 447 U.S. 752,
23 763-64 (1980); *Wingnut Films, Ltd. v. Katja Motion Pictures Corp.*, 2007 WL

25
26 ² The aims of these unsavory tactics appear to be fourfold: (1) delay Plaintiffs’
27 pretrial fact finding and trial preparation; (2) impair their ability to confirm the facts
28 necessary to file dispositive motions and amend their complaint; (3) drive up their
litigation costs; and (4) suppress relevant evidence damaging to Defendants and
embarrassing to their accomplices.

2758571, *16 (C.D. Cal. Sept. 18, 2007); *In re Heritage Bond Litig.*, 223 F.R.D. 527, 530 (C.D. Cal. 2004).

II. DEFENDANT'S INTRODUCTION.

A. Nature of the Case.

Plaintiffs' Motion to Compel Further Responses to Interrogatories and for Sanctions should be denied for three reasons. First, eight months after propounding Plaintiffs' Interrogatories, Set One, Plaintiffs now move to compel further information to those interrogatories, seeking to discover information that has already been, or will be, produced. Second, Defendants adequately responded to each interrogatory in the instant discovery dispute, and Defendants are not required to satisfy each and every possible interpretation, including Plaintiffs' subjective interpretations of the interrogatories. Third, Defendants have not acted in bad faith, and thus sanctions are not warranted. Finally, the Court should find that Defendants did not waive any objections to the Interrogatories, because Defendants made a sufficient showing of good cause.

B. Nature of This Discovery Dispute.

The instant discovery dispute reflects the sheer craziness and burden imposed by the number of discovery motions Plaintiffs have filed in this matter (including hundreds of pages filed in support of their Motions as exhibits). Worse, however, is that Plaintiffs claim it has been Defendants that have "forced" Plaintiffs to file these Motions. Plaintiffs have not been forced to file this Motion, especially not more than two months after the last meet and confer effort, and especially not eight months after receiving Defendants' responses. Even more, certainly Defendants did not force Plaintiffs to file this Motion to Compel that would be heard after the operative discovery cut-off date of October 2, 2015. In fact, the Court itself, both Judge Fitzgerald and Magistrate Mumm, expressly cautioned the parties against filing additional discovery motions.

That Plaintiffs' file a Motion to Compel has become automatic. Even worse,

1 however, is that Plaintiffs delay filing these Motions to Compel. A brief timeline of
2 events leading up to the instant discovery dispute demonstrates Plaintiffs' lack of
3 diligence.

- 4 • **April 2014:** Plaintiffs file this action.
- 5 • **November 5, 2014:** *Seven months* after filing this action, Plaintiffs serve
6 their Requests for Production of Documents, Set One.
- 7 • **December 18, 2014:** *Eight months* after filing this action, Plaintiffs serve
8 their Interrogatories, Set One.
- 9 • **June 11, 2015:** *Ten months* after filing this action, Plaintiffs serve their
10 Interrogatories, Set Two and Set Three, and their Requests for Production
11 of Documents, Set Two.
- 12 • **June 30, 2015:** Plaintiffs file their Motion to Compel Answers to
13 Interrogatories of Girardi | Keese To Provide Further Responses and
14 Produce Documents Responsive to Plaintiffs' Request for Production of
15 Documents, Set One, approximately *eight months* after serving the subject
16 discovery requests.
- 17 • **July 21, 2015:** The Court grants Plaintiffs' Motion to Compel Answers to
18 Interrogatories of Girardi | Keese To Provide Further Responses and
19 Produce Documents Responsive to Plaintiffs' Request for Production of
20 Documents, Set One.
- 21 • **August 28, 2015:** Plaintiffs file their Motion to Compel to Compel
22 Defendant Girardi|Keese To Provide Verified Substantive Answers To
23 Plaintiffs' Interrogatories, Set Two, *two months* after serving the subject
24 discovery request.
- 25 • **September 4, 2015:** Plaintiffs file their Motion to Compel To Compel
26 Defendant Girardi | Keese To Provide Verified Substantive Answers To
27 Plaintiffs' Interrogatories, Set Three, *three months* after serving the subject
28 discovery request.

///

- **September 24, 2015:** Plaintiffs move to compel Further Responses to Interrogatories, Set One, *eight months* after propounding the subject discovery requests.

Plaintiffs' delay in filing the instant Motion—Plaintiffs' *fifth motion to compel*—is most egregious. Through this Motion, Plaintiffs seek to compel GK's responses to the *first* set of discovery, which Plaintiffs propounded approximately *nine months ago*, and approximately *eighteen months* after filing this action. That Plaintiffs waited the longest to compel answers to the initial set of discovery defies common sense. The Interrogatories are the first of three sets of Interrogatories that Plaintiffs propounded. Thus, it is logical to assume that through these Interrogatories Plaintiffs sought information that they deemed to be of the utmost importance, a priority, and hence, the first they propounded at the outset of discovery. In sum, if the information Plaintiffs seek to discover by this Motion is so vital to Plaintiffs' case, they would have brought this Motion months ago—simple as that.

To make matters worse, Plaintiffs' Motion to Compel *Interrogatories, Set One*, focuses much of the discussion on Plaintiffs' previous *requests for production* and other discovery matters which were previously resolved. In fact, the information requested under the Interrogatories has been provided by way of supplemental discovery. Most recently, on September 28, 2015, Defendants' produced 21,000 pages of responsive documents to Plaintiffs' Requests for Production of Documents, Set One. And over the last few months, Plaintiffs have deposed several witnesses whom Plaintiffs deem "key" to their case. In sum, Plaintiffs cannot reasonably expect to discover information that has not already been produced. This Motion represents nothing more than an attempt to disrupt and delay.

III. LOCAL RULE 37 MEET AND CONFER EFFORTS.

A. Plaintiffs' Position.

On December 18, 2014, Plaintiffs served its first set of interrogatories on GK. Sheehan Decl., 18; Ex.10. GK's response was due on January 17, 2015. GK did not

1 respond until January 23, 2015, and its responses consisted of boilerplate objections
2 and answers that were incomplete and evasive. *Id.*; Ex.11. In addition, GK did not
3 verify its answers under oath. *Id.*

4 On February 13, 2015, Plaintiffs served an Amended Interrogatory 3. *Id.*, ¶ 19;
5 Ex. 14. On March 17, 2015, GK belatedly provided its response to the amended
6 interrogatory. *Id.*, ¶ 19; Ex. 15.

7 On March 3, 2015, Plaintiffs' counsel sent GK a detailed eight-page meet and
8 confer letter, setting forth the reasons why its boilerplate objections were wholly
9 without merit, explaining why further responses were required, and requesting that
10 GK provide proper verifications of its answers. *Id.*, ¶ 20; Ex. 16. The letter also
11 requested that counsel meet and confer, preferably in person, within ten days. *Id.* GK
12 did not respond to the letter, and ignored the request to meet and confer. *Id.*

13 On March 25, 2015, Plaintiffs' counsel spoke telephonically with Defendant
14 James O'Callahan, who is also one of GK's attorneys in this action. *Id.*, ¶¶ 21-22.
15 During this call, the parties discussed outstanding discovery issues, including the
16 Interrogatories. Mr. O'Callahan stated that Plaintiffs had already received all of the
17 information to which they were entitled, but nonetheless agreed to review Plaintiffs'
18 March 3 letter and to speak with Plaintiffs' counsel the following week. *Id.* On April
19 2 and April 15, 2015, the parties conducted two more telephonic meet-and-confer
20 conferences, during which, Mr. O'Callahan stated that he had reviewed Plaintiffs'
21 letter, but disagreed with Plaintiffs' analysis and would not provide any further
22 responses to the Interrogatories. *Id.*

23 At the July 21, 2015 hearing on Plaintiffs' Motion to Compel regarding
24 Plaintiffs' first set of request for production, the Court admonished GK: "[I]f we get
25 another motion, I will look at it but I must admit that it seems to me almost every
26 single issue involved in this motion I previously ruled upon on other motions. I don't
27 want to rule upon the same issue again. And if I do, then what I'll do is I will ask for
28 declarations regarding attorneys' fees incurred in the prior motions, and so we can add

1 those up.” The Court also emphasized that GK was obligated to “get the information
2 to the Plaintiffs that they want or that they need,” but that “whether they want it or
3 need it, if it’s relevant to a claim or defense, they’re entitled to it and they’re going to
4 have it.” Shen Decl., ¶ 14, Ex. 3, p. 20:4 - 25.

5 Following the July 21 hearing, Plaintiffs’ counsel sent GK a final meet and
6 confer letter, asking it to reconsider its position in light of Magistrate Judge Mumm’s
7 orders and comments. *Id.*, ¶ 38, Ex. 15. On July 30, 2015, GK’s counsel sent a brief
8 letter acknowledging receipt of the July 23 letter and promising a response by August
9 3. Plaintiffs, however, never received any further communications from GK
10 concerning the Interrogatories, thus necessitating the filing of this Motion. *Id.*, ¶ 39,
11 Ex. 7.

12 At no time during this meet and confer process did GK claim that it did not
13 have information with which to respond further; suggest that Plaintiffs narrow any of
14 the interrogatories; or seek to support any of its boilerplate objections with reference
15 to facts or legal authorities. Sheehan Decl., ¶ 22.

16 **B. Defendant’s Position.**

17 On December 18, 2014, Plaintiffs served Plaintiffs’ Interrogatories, Set One
18 ("Rogs Set 1"), which are the subject of the instant Motion. On January 23, 2015,
19 Defendant Girardi | Keese ("GK") served its responses to Rogs Set 1 ("GK's
20 Responses"). Plaintiffs’ claim that GK's responses were served one week late is
21 inaccurate. Under Fed. R. Civ. P. 6(d), "[w]hen a party may or must act within a
22 specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F),
23 3 days are added after the period would otherwise expire under Rule 6(a)." Plaintiffs
24 served their Rogs Set 1 via U.S. Mail on December 18, 2015. Therefore, pursuant to
25 Fed. R. Civ. P. 33(b)(2), GK's responses should have been served 30 days after
26 December 18, 2014, which was January 18, 2015, plus the additional three days
27 pursuant to Fed. R. Civ. P. 6(d). Thus the deadline for serving GK's responses was
28 January 21, 2015. Since GK served its responses to Rogs Set 1 on January 23, 2015,

1 GK's responses were only two days late rather than one week as Plaintiffs contend.

2 On March 3, 2015, Plaintiffs' counsel, Amanda R. Touchton, sent a meet and
3 confer letter addressed to Celene Chan, then of-counsel for Defendants. Declaration of
4 Sheehan ("Sheehan Decl."), Ex. 16. At the time Ms. Chan would have received
5 Plaintiffs' letter, she was no longer employed by GK. *See* Defendants' Notice of
6 Withdrawal of Counsel for Celene Chan (Docket No. 42). In the "Conclusion" section
7 of the March 3, 2015 letter, Plaintiffs' counsel wrote:

8 "Pursuant to Local Rule 37, the parties must meet and confer in person
9 before a motion to compel is filed; in addition, the conference should
10 take place within 10 days of receipt of this letter. We would like to hear
11 from you no later than March 5, 2015, so that if a motion to compel is
12 necessary we may schedule an in-person meet and confer at our offices."

12 *Id.*, p. 8.

13 It is clear, therefore, that at the time Plaintiffs wrote the March 3, 2015 letter to
14 Defendants' then-counsel, Plaintiffs contemplated filing a motion to compel
15 concerning Rogs Set 1, which were the subject of the March 3, 2015 letter.

16 As Plaintiffs stated in their Motion, "GK did not respond to the letter." *See III.*
17 A. Therefore, pursuant to the terms of the March 3, 2015 letter, Plaintiffs should have
18 scheduled an in-person meet and confer at their officer. They failed to do so.

19 On March 25, 2015, Plaintiffs' counsel spoke with James G. O'Callahan, a
20 defendant in this action and counsel for Defendants. Plaintiffs' counsel and Mr.
21 O'Callahan also conducted two additional telephonic meet and confer conferences on
22 April 2 and April 15. That Plaintiffs rely on these phone calls evidencing their meet
23 and confer efforts is misleading for several reasons. Most importantly, Defendants
24 contend that the primary discussion during these phone calls did not concern Rogs Set
25 1. Rather, Defendants assert here that the focus of these phone calls concerned
26 Plaintiffs' Requests for Production, Set 1 ("RPD Set 1"), which were the subject of a
27 Motion to Compel already ruled upon by this Court. *See* Docket No. 94. As Plaintiffs
28 have previously represented to this Court, this Court is about documents. Thus, it is

1 the documents purportedly in Defendants' possession, custody, or control that
2 Plaintiffs have sought time and again. Hence, it is no surprise that Plaintiffs filed their
3 first motion to compel for GK's responses to Plaintiffs' Requests for Production Set 1,
4 rather than Rogs Set 1. It is also important to emphasize that Plaintiffs' referred to the
5 telephonic meet and confer efforts of March 25 and April 2 in their portion of their
6 Motion to Compel RPD Set 1, as evidencing their efforts concerning that set of
7 discovery. Nowhere in their discussion in that previous motion, did Plaintiffs assert
8 that those telephonic conferences also included a discussion concerning Rogs, Set 1.

9 On July 23, 2015, Plaintiffs sent an additional meet and confer letter. Contrary
10 to Plaintiffs' contentions, GK did, in fact, respond to Plaintiffs via a letter sent on July
11 30, 2015. (Plaintiffs made the same inaccurate claim in their Motion to Compel GK's
12 Responses to Plaintiffs' Request for Production, Set 2, and Defendants corrected them
13 there just as they did there). In the July 30 letter, GK referred to a discussion between
14 Defendants' counsel and counsel for Plaintiffs, Jerry Friedberg, regarding a potential
15 mediation session and delaying the present discovery issues. Further, GK wrote, "on
16 this basis, Defendants will contact you on Monday, August 3, regarding the discovery
17 concerns addressed in the above-referenced letters, unless Defendants hear from Mr.
18 Friedberg at an earlier date."

19 As the foregoing meet and confer efforts demonstrate, there is no explanation
20 for Plaintiffs' waiting to file the instant Motion. To not have filed this sooner is
21 nothing but inexcusable delay by Plaintiffs. Furthermore, that Plaintiffs' position on
22 this Motion includes significant discussion of discovery requests that were already the
23 subject of previous motions to compel that have been decided upon by the court or are
24 pending, is an abuse of the discovery process. Here, Plaintiffs should not have relied
25 on meet and confer efforts that Defendants believed to have been related to other sets
26 of Plaintiffs' discovery, especially because Plaintiffs themselves referred to these
27 efforts in their previous papers filed with the Court. Also, Plaintiffs' meet and confer
28 efforts fail to recognize that Defendants have produced supplemental responses. By

1 doing so, Plaintiffs fail to admit to the Court that, as a result of Court-ordered
2 supplemental responses provided by Defendants, they are already in possession of
3 information that is responsive to Rogs Set 1.

4 **IV. INTERROGATORY RESPONSES AT ISSUE.**

5 The issues in dispute, and the contentions and points and authorities of each
6 party with respect to each issue, are as follows:

7 **INTERROGATORY NO. 3.**

8 **INTERROGATORY NO. 3:**

9 Describe each withdrawal of funds from the ESCROW ACCOUNT by
10 providing:

- 11 (a) The date of the withdrawal;
- 12 (b) The amount of the withdrawal;
- 13 (c) The disposition of the funds withdrawn;
- 14 (d) The means by which the withdrawal was made (e.g., check, intrabank
15 transfer, wire transfer, etc.);
- 16 (e) The name, address and telephone number of the person authorizing
17 the withdrawal; and
- 18 (f) The reason for the withdrawal.

19 [“ESCROW ACCOUNT” was defined as “the account at Citibank, N.A.
20 used by Defendant Girardi | Keese as an escrow account for the
21 HRT LITIGATION, as evidenced, in redacted from, by the bank record
22 attached hereto as Exhibit A.”]

23 **RESPONSE TO INTERROGATORY NO. 3:**

24 Defendants incorporate the General Objections as fully set forth herein.
25 Defendants object to this interrogatory on the grounds that it is overly broad
26 as to the scope of information sought, as well as unduly burdensome,
27 harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012
28 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009) (stating that while contention interrogatories are permitted, they “are often overly broad and unduly burdensome when they require a party to state ‘every fact’ or ‘all facts’ supporting identified allegations or defenses”); *Bovarie v. Schwarzenegger*, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22, 2011) (finding that requests seeking “each and every fact” are overly broad

1 and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June
2 15, 2011) (noting that contention interrogatories that ask for “each and every
3 fact or application of law to fact . . . may be held overly broad and unduly
burdensome”).

4 Defendants object that this interrogatory is vague and ambiguous. This
5 interrogatory also seeks information that is equally available to the
6 requesting party or are otherwise in the requesting party’s possession,
7 control, or custody. Defendants objects [*sic*] to the interrogatory to the
8 extent that this information is already in Plaintiffs’ possession due to
9 Defendants’ production of initial disclosures, Defendants’ response to
10 Plaintiffs’ request for production, and/or documents produced by or
11 available from third parties in response to Plaintiffs’ subpoenas. This
12 interrogatory is not reasonably limited in time or scope nor reasonably
13 calculated to lead to the discovery of admissible evidence. This
14 interrogatory calls for a legal conclusion. This interrogatory seeks counsel’s
evaluation and analysis of legal theories, thus further violating the attorney
work-product privilege. Defendants further object that this interrogatory is
cumulative and intended to harass. Defendants objects [*sic*] to this
interrogatory to the extent that it violates the attorney-client privilege and/or
work product doctrine and thereby asserts the aforementioned privileges.
Defendants have not completed discovery in this matter and reserve the right
to supplement this response.

15 Subject to and without waiving the foregoing objections, which are
16 expressly reserved, Defendants respond as follows:

17 Plaintiffs fail to attach Exhibit A referencing the defined term “ESCROW
18 ACCOUNT” to their interrogatories; accordingly, Defendants are unable to
respond.

19 **RESPONSE TO AMENDED INTERROGATORY NO. 3**
20 **ATTACHING “EXHIBIT A”:**

21 Defendant incorporates here the General Responses and Objections set forth
22 above. Defendant further objects on the following grounds.

23 Objection. Attorney client privilege. *Clarke v. American Commerce*
24 *National Bank* (1992) 974 F2d 127; *In re: Sealed case* (1984) 737 F2d 94;
United States v. Robinson (1997) 121 F3d 971; *United States v. Moscony*
(1991) 927 F2d 742; *Kirlik v. Goldstein* (1984) 724 F2d 844.

25 Additionally, Defendant objects to this interrogatory to the extent is [*sic*]
26 seeks the disclosure of confidential personal financial information protected
27 by the right of privacy pursuant to Section 1 of Article 1 of the Constitution
of California and the United States Constitution.

28 Defendant further objects that this interrogatory is vague and ambiguous,
especially in regard to “describe.” This interrogatory also seeks information

that is equally available to the requesting party or are otherwise in the requesting party's possession, control, or custody. Defendant objects to the interrogatory to the extent that this information is already in Plaintiffs' possession due to Defendant's production of initial disclosures, Defendant's response to Plaintiffs' request for production, and/or documents produced by or available from third parties in response to Plaintiffs' subpoenas. This interrogatory seeks counsel's evaluation and analysis of legal theories, thus further violating the attorney work-product privilege. Defendants further object that this interrogatory is cumulative and intended to harass. Defendants objects [sic] to this interrogatory to the extent that it violates the attorney-client privilege and/or work product doctrine and thereby asserts the aforementioned privileges. Defendants have not completed discovery in this matter and reserve the right to supplement this response.

Subject to and without waiving the foregoing objections, in accord with Defendant's understanding of this request, and based on Defendant's knowledge formed after a reasonable inquiry, Defendant responds as follows.

Although Defendant has not completed Defendant's investigation into this matter and discovery is still ongoing, Defendant believes the following based on Defendant's understanding of this request and Defendant's current knowledge formed after a reasonable and good faith inquiry:

- (a) Please [sic] records attached as "EXHBIT 1".
- (b) Please [sic] records attached as "EXHBIT 1".
- (c) Please [sic] records attached as "EXHBIT 1".
- (d) Please [sic] records attached as "EXHBIT 1".
- (e) *John Howard of Citibank. Please [sic] records attached as "EXHBIT 1".*
- (f) *Partial payment of settlement funds.*

[Emphasis added.]

A. Plaintiffs' Contentions in Support of Compelling Further Response.

1. The Information Sought By Interrogatories 3-6 is Plainly Relevant, Discoverable and Available to GK.

Interrogatories 3-6 seek specific information concerning GK's receipt and disbursement of the Settlement Funds necessary to trace the source of the funds paid to the HRT Claimants and the disposition of the Settlement Funds, most of which

1 remain unaccounted for even at this late date. The Court has already recognized the
2 undeniable relevance of this information when it denied GK's motion to quash the
3 Torrey Pines Bank ("TPB") subpoena, finding:

4 Plaintiffs allege that Defendants improperly withheld or withdrew various
5 amounts from the settlement funds; breached their duty to distribute the
6 settlement funds promptly; and charged excessive costs to Plaintiffs. Plaintiffs
7 further allege that Defendants breached their duty to avoid commingling the
8 settlement funds with Defendants' own funds and failed to provide an
9 accounting. Plaintiffs seek, *inter alia*, disgorgement and constructive trust over
10 all wrongfully converted money and property. These claims and remedies
11 necessitate tracing Defendants' retention, use, and distribution of the settlement
12 funds. Defendants' operating account or accounts are manifestly relevant to
these allegations, as are client trust accounts other than the one that initially
received the settlement funds. As Plaintiffs argue (JS 24-37), activity within
such accounts could evidence, *e.g.*, wrongful transfers of settlement funds, costs
unrelated to the HRT Litigation but charged to Plaintiffs, *etc.*

13 Dkt. No. 79, p. 9.

14 Furthermore, GK has no excuse for refusing to provide this information. By
15 law, GK is required to maintain the records required to answer Interrogatories 3-6 for
16 a period of five years. Rule 4-100(B)(3) of the California Rules of Professional
17 Conduct requires that all attorneys "[m]aintain complete records of all funds . . . of a
18 client coming into the [attorneys'] possession" so as to be able to "render appropriate
19 accounts to the client regarding them[.]" Pursuant to the authority expressly granted it
20 by Rule 4-100(C), the Board of Governors of the State Bar has directed that:

21 A member shall, from the date of receipt of client funds through the
22 period ending five years from the date of appropriate disbursement of
23 such funds, maintain:

24 (a) a written ledger for each client on whose behalf funds are
25 held that sets forth: (i) the name of such client, (ii) the date, amount,
26 payee and purpose of each disbursement made of behalf of such
client, and (iv) the current balance for such client;

27 (b) a written journal for each bank account that sets forth: (i) the
28 name of such account, (ii) the date, amount and client affected by each

debit and credit, and (iii) the current balance in such account;

(c) all bank statements and cancelled checks for each bank account; and

(d) each monthly reconciliation (balancing) of (a), (b), and (c).

Board of Governors of the State Bar, Standards (eff. Jan. 1, 1993).

GK was also required by law to furnish that information to Plaintiffs within ten days of Plaintiffs requesting an accounting relating to the disposition of the Settlement Funds, which Plaintiffs did prior to the filing of this lawsuit. *See* Bus. & Prof. Code § 6091 (“At the client’s written request, the attorney shall furnish the client with a complete statement of the funds received and disbursed and any charges upon the trust account, within 10 calendar days after receipt of the request.”); *see also* Cal. R. Prof. Conduct 4-100(B)(3) (“A member shall . . . render appropriate accounts to the client”); *Monroe v. State Bar*, 55 Cal. 2d 145, 150 (1961) (“petitioner, of course, was under a duty to make a prompt accounting”); *Prakashpalan v. Engstrom, Lipscomb & Lack*, 223 Cal. App. 4th 1105, 1124-26 (2014) (Rule 4-100(B)(3) requires attorney to “disclose sufficient information to enable the client to evaluate whether the settlement proceeds have been properly distributed”); *In re Brockway*, 4 Cal. State Bar Ct. Rptr. 944, 2006 WL 1360438, *6 (May 15, 2006) (“the obligation . . . found in rule 4-100(B)(3) does not require as a predicate that the client demand such an accounting”).³

2. GK’s Answers to Subparts (e) and (f) Are Incomplete and Evasive.

Interrogatory 3 seeks information relating to GK’s receipt of the Settlement

³ Arkansas law, which applied to the GK attorneys who appeared in the multi-district litigation, is to the same effect. *See* Ark. R. Prof. Conduct 1.5(c) (“Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement . . . showing the remittance to the client and the method of its determination.”); *id.*, 1.15(a)(5) (“a lawyer . . . , upon request by the client . . . shall promptly render a full written accounting”).

1 Funds from the Citibank escrow account established pursuant to the Master
2 Settlement Agreement (“MSA”). Plaintiffs move to compel further responses only
3 to subparts (e) and (f).

4 Under the Federal Rules, a party may serve on another party interrogatories that
5 “may relate to any matter that may be inquired into under Rule 26(b),” Fed. R. Civ.
6 P. 33(a)(2), which includes “any nonprivileged matter that is relevant to any party’s
7 claim or defense” Fed. R. Civ. P. 26(b)(1). The Federal Rules further instruct
8 that “[e]ach interrogatory must, to the extent it is not objected to, be answered
9 separately and fully in writing under oath.” Fed. R. Civ. P. 33(b)(3). “A party
10 answering interrogatories has an affirmative duty to furnish any and all information
11 available to the party.” *Bryant v. Armstrong*, 285 F.R.D. 596, 612 (S.D. Cal. 2012)
12 (citation omitted). “Answers must be complete, explicit and responsive. If a party
13 cannot furnish details, he should say so under oath, say why and set forth the efforts
14 he used to obtain the information. He cannot plead ignorance to the information that
15 is from the information that is from sources within his control.” *Milner v. Nat’l*
16 *School of Health Tech.*, 73 F.R.D. 628, 632 (E.D. Pa. 1977). “[A]n evasive or
17 incomplete . . . answer . . . **must be treated** as a failure to . . . answer” Fed. R.
18 Civ. P. 37(a)(4) (emphasis added).

19 GK’s response to subpart (e) identified “John Howard” of Citibank as the
20 person who authorized the transfers. This response is evasive; Citibank was only the
21 escrow agent and was merely following instructions in disbursing the Settlement
22 Funds to GK. Interrogatory 3 plainly requests the identity of the person or persons
23 who were authorized to instruct Citibank to release the funds from escrow.
24 Presumably, that would be someone acting on behalf of the HRT Defendants with
25 whom GK was in communication.

26 Plaintiffs also seek to compel GK to identify the reason for each withdrawal in
27 response to subpart (f). GK’s response – “[p]artial payment of settlement funds” – is
28 incomplete and evasive; it does not indicate to whom the funds were to be paid and for

1 what reason, such as pay attorney's fees, reimburse costs, or settle Medicare liens.

2 GK should be compelled to identify the person(s) who authorized Citibank to
3 release and transfer the Settlement Funds from the escrow account and explain the
4 purpose underlying each of those transfers.

5 **3. GK Waived Its Objections to the Interrogatories.**

6 **a. GK Waived Its Objections By Serving Its Response Late.**

7 Plaintiffs served Set One on GK on December 18, 2014, making GK's
8 responses due by January 17, 2015. Sheehan Decl., ¶ 18. GK, however, did not serve
9 its responses until January 23, 2015, a week late. *Id.* By failing to timely serve its
10 responses, GK waived all of its objections to the Interrogatories.

11 Federal Rule of Civil Procedure 33 provides that "the responding party shall
12 serve its answers and any objections within 30 days after being served with the
13 interrogatories." Fed. R. Civ. P. 33(b)(2). It further provides that "[a]ny ground not
14 stated in a timely objection is waived unless the court, for good cause, excuses the
15 failure." *Id.*, (b)(4). GK's response was late; thus its objections to the Interrogatories
16 have been waived. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d
17 1468, 1473 (9th Cir. 1992) ("It is well established that a failure to object to discovery
18 requests within the time required constitutes a waiver of any objection.") (citation
19 omitted); *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981) ("Generally, in the
20 absence of an extension of time or good cause, the failure to object to interrogatories
21 within the time fixed by Rule 33, FRCivP, constitutes a waiver of any objection.");
22 *Walker v. Lakewood Condo. Owners Ass'n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999)
23 (Nakazato, M.J.) ("failure to serve objections in the time and manner required by the
24 Rules will result in a waiver of valid objections").

25 Moreover, GK has never bothered to offer any excuse, much less show good
26 cause, for its failure to timely respond, nor can it considering that it never requested an
27 extension to respond from either Plaintiffs or the Court. *See Blumenthal v. Drudge*,
28 186 F.R.D. 236, 240 (D.D.C. 1999) ("Discovery deadlines are intended to ensure the

1 efficient progress of a lawsuit and counsel are expected to comply with them. If
2 plaintiffs' counsel were not able to meet a discovery deadline, they should have
3 sought an agreement with defendant's lawyer to submit their responses at a
4 later date.").

5 ***b. GK Waived Its Objections By Responding "Subject To" Its***
6 ***Boilerplate Objections.***

7 GK also waived its objections to the Interrogatories by providing substantive
8 responses that it made "subject to" its boilerplate objections. *See Consumer Elecs.*
9 *Assn. v. Compras And Buys Magazine, Inc.*, 2008 WL 4327253, *3 (S.D. Fla. Sept.
10 18, 2008) (Answers "subject to" and "without waiving objections" "preserve . . .
11 nothing and serve . . . only to waste the time and resources of both the Parties and the
12 Court. Further, such practice leaves the requesting party uncertain as to whether the
13 question has actually been fully answered or whether only a portion of the question
14 has been answered."); *Meese v. Eaton Mfg. Co.*, 35 F.R.D. 162, 166 (N.D. Ohio 1964)
15 ("Whenever an answer accompanies an objection, the objection is deemed waived,
16 and the answer, if responsive, stands."); *Fay Avenue Properties, LLC v. Travelers*
17 *Property Casualty Company of America*, 2014 WL 2965316, *1 (S.D. Cal. Jul. 1,
18 2014) ("Conditional responses and/or the purported reservation of rights by Plaintiffs
19 is improper and ultimately has the effect of waiving Plaintiffs' objections to the
20 discovery requests."); *see also* Wright, Miller & Marcus, Federal Practice and
21 Procedure: Civil § 2173 ("A voluntary answer to an interrogatory is also a waiver of
22 the objection.").

23 ***4. All of GK's Objections Lack Merit and Should Be Overruled.***

24 "The party who resists discovery has the burden to show discovery should not
25 be allowed, and has the burden of clarifying, explaining, and supporting its
26 objections." *Nat'l Acad. of Recording Arts & Sciences, Inc. v. On Point Events, LP*,
27 256 F.R.D. 678, 680 (C.D. Cal. 2009) (Chapman, M.J.). As discussed below, GK has
28 not come close to meeting its burden here, even if the Court excuses the waiver of its

objections. Indeed, most, if not all, of its boilerplate objections are simply frivolous.⁴

a. GK's Objections May Be Ignored as Lacking the Required "Specificity."

As a preliminary matter, GK's objections fail to comply with Federal Rule 33's requirement that the "grounds for objecting to an interrogatory must be stated with *specificity*." Fed. R. Civ. P. 33(b)(4) (emphasis added). Here, GK has repeated the same vague and conclusory boilerplate objections in response to every interrogatory in Set One. By way of example:

- "Defendants object to this interrogatory on the grounds that it is overly broad as to the scope of information sought, as well as unduly burdensome harassing and oppressive."
- "Defendants object that this interrogatory is vague and ambiguous."
- "This interrogatory is not reasonably limited in time and scope nor reasonably calculated to lead to the discovery of admissible evidence."
- "This interrogatory calls for a legal conclusion."

Sheehan Decl., Ex. 13, p. 7.

Such "[b]oilerplate, generalized objections are inadequate and tantamount to not making any objection at all." *Walker*, 186 F.R.D. at 587; *see Davis*, 650 F.2d at 1160 ("objections should be plain enough and specific enough so that the court can understand in what way the interrogatories are alleged to be objectionable"); *Duran v. Cisco Sys., Inc.*, 258 F.R.D. 375, 379 (C.D. Cal. 2009) (Chapman, M.J.) ("unexplained and unsupported boilerplate objections are improper") (citing cases); *Everflow Tech. Corp. v. Millennium Electronics Inc.*, 2009 WL 672985, *2 (N.D. Cal. 2009) (overruling objections that "were repeated verbatim in response to a large

⁴ Plaintiffs addressed each of GK's objections in their March 3, 2015 meet and confer letter to GK. *See* Sheehan Decl., Ex. 14. GK did not respond to that letter or attempt to support any of its objections with facts or law during the meet and confer process, and thus has effectively conceded the merits of Plaintiffs' positions. *Id.*, ¶ 20.

1 number of the interrogatories”); *Saca v. J.P. Molyneux Studio Ltd.*, 2007 WL
2 2972842, *3 (E.D. Cal. 2007) (“objections asserted in the boilerplate responses to
3 plaintiff’s requests are waived”).

4 **b. GK’s “General Objections” Are Meritless.**

5 GK’s response is prefaced by a two-page “Preliminary Statement” and three
6 pages of “General Objections.” Such objections are improper and to be ignored.
7 *See M2 Software, Inc. v. M2 Commc’ns, L.L.C.*, 217 F.R.D. 499, 501 (C.D. Cal. 2003)
8 (Chapman, M.J.) (“The plaintiff’s General Objections are not sufficient to raise any
9 substantial, meaningful or enforceable objections to any particular discovery
10 request.”).

11 **c. GK’s Objection that the Interrogatory is “Overly Broad” and**
12 **“Unduly Burdensome, Harassing and Oppressive” is Meritless.**

13 Each of GK’s responses include the objection that “this interrogatory is overly
14 broad as to the scope of information sought, as well as unduly burdensome, harassing
15 and oppressive,” and that it is “cumulative and intended to harass.” As discussed
16 above, the Interrogatories seek relevant information that this Court has previously
17 determined Plaintiffs are entitled to. Moreover, such objections are improper when, as
18 here, no supporting declaration or explanation is furnished. *See Bank of Mongolia v.*
19 *M & P Global Fin. Servs., Inc.*, 258 F.R.D. 514, 519 (S.D. Fla. 2009) (“A party
20 objecting on these grounds must explain the specific and particular way in which a
21 request is vague [or] overly broad . . .”); *A. Farber & Partners, Inc. v. Garber*, 234
22 F.R.D. 186, 188 (C.D. Cal. 2006) (Chapman, M.J.) (“general or boilerplate objections
23 such as ‘overly burdensome and harassing’ are improper – especially when a party
24 fails to submit any evidentiary declarations supporting such objections”).

25 **d. GK’s Objection that the Interrogatory is “Vague and**
26 **Ambiguous” is Meritless.**

27 Each of GK’s responses include the objection that “this interrogatory is vague
28 and ambiguous.” This objection is spurious. The interrogatories concern identified

1 financial transactions and all terms that do not have a plain and ordinary meaning are
2 specially defined.

3 *e. GK's Objection that the Interrogatory Seeks Information*
4 *"Equally Available" to Plaintiffs is Meritless.*

5 Each of GK's responses include the objection that "[t]his interrogatory . . .
6 seeks information that is equally available to the requesting party or are [sic]
7 otherwise in the requesting party's possession, control, or custody," and that
8 "Defendants objects [sic] to the interrogatory to the extent that this information is
9 already in Plaintiffs' possession due to Defendants' production of initial disclosures,
10 Defendants' response to Plaintiffs' request for production, and/or documents produced
11 by or available from third parties in response to Plaintiffs' subpoenas." This objection
12 is particularly lacking in merit, considering that all of the bank and accounting records
13 necessary to respond are in GK's exclusive possession and control, and given its
14 steadfast refusal to produce those records, even in the face of this Court's July 21
15 order requiring it to do so.

16 *f. GK's Objection as to "Time or Scope" is Meritless.*

17 Each of GK's responses include the objection that "[t]his interrogatory is not
18 reasonably limited in time or scope nor reasonably calculated to lead to the discovery
19 of admissible evidence." Not so. Each interrogatory references transactions to which
20 GK was a party and relate to the receipt and disposition of the Settlement Funds,
21 which is central to Plaintiffs' claims.

22 *g. GK's "Legal Conclusion" Objection is Meritless.*

23 Each of GK's responses include the objection that "[t]his interrogatory calls for
24 a legal conclusion" and "seeks counsel's evaluation and analysis of legal
25 theories" Also not true. The Interrogatories request purely factual information:
26 dates, amounts, accounts, identities, etc. They do not call for a "legal conclusion" or
27 "counsel's evaluation and analysis," and GK makes no attempt to show that they do.
28 *See Bd. of Trustees of Leland Stanford Junior Univ. v. Tyco Int'l Ltd.*, 253 F.R.D. 521,

522 (C.D. Cal. 2008) (Chapman, M.J.) (boilerplate “legal conclusion” objection “inadequate”).

h. GK’s “Attorney-Client Privilege and/or Work Product Doctrine” Objection is Meritless.

Each of GK’s responses assert that “Defendants objects [sic] to this interrogatory to the extent that it violates the attorney-client privilege and/or work product doctrine and thereby asserts the aforementioned privileges.” The Court has now overruled this objection on at least four prior occasions: at the June 16, 2015 hearing on the motion to quash the TPB subpoena, Dkt. 84, R.T., p. 16; in its July 13, 2015 order denying that motion, Dkt. No. 79, pp. 8-9; at the July 21, 2015 hearing on Plaintiffs’ motion to compel Defendants to provide further responses to its first set of requests for production, Shen Decl., 11, Ex. 3, pp. 2:12-22, 19:19-20:13, Dkt. No. 94; and during the telephonic hearing on August 10, 2015 regarding the Protective Order for the records produced by TPB, Dkt. No. 103.

B. Defendant’s Contentions in Opposition to Compelling Further Response.

Defendants adequately responded to Interrogatory 3, subparts (e) and (f), and Defendants should not be faulted for Plaintiffs’ failure to request specifically the information they seek to discover.

Defendants complied with Interrogatory 3(e) by identifying “John Howard” as the individual who authorized each withdrawal of funds from the ESCROW ACCOUNT. According to Plaintiffs, however, that response was insufficient because Interrogatory 3(e) “plainly” requested that Defendants provide the “identity of the Person or persons who were authorized to instruct Citibank to release the funds from escrow.” Interrogatory 3 *supra*, section IV.A.2. Plaintiffs cannot offer their subjective interpretation on how Defendants *should have* read Interrogatory 3(e). *See Thomas v. Cate*, (2010) 715 F.Supp.2d 1012, 1030-31 (E.D. Cal. 2010) (applying a common sense reading of undefined terms in special interrogatories). Moreover, Defendants are not required to respond with information that satisfies each and every possible

1 interpretation, including Plaintiffs' subjective interpretation, of Interrogatory 3(e).

2 Defendants responded to Interrogatory 3(f) by explaining that each withdrawal
3 of from the escrow account was for the partial payment of settlement funds.

4 According to Plaintiffs, however, that response was insufficient because Interrogatory
5 3(f) "does not indicate to whom the funds were to be paid and for what reason, such as
6 pay attorney's fees, reimburse costs, or settle Medicare liens." *Supra* section IV.A.2.
7 Plaintiffs cannot offer their subjective interpretation on how Defendants *should have*
8 read Interrogatory 3(f). *See Thomas v. Cate*, (2010) 715 F.Supp.2d 1012, 1030-31
9 (E.D. Cal. 2010) (applying a common sense reading of undefined terms in special
10 interrogatories). Moreover, Defendants are not required to respond with information
11 that satisfies each and every possible interpretation, including Plaintiffs' subjective
12 interpretation, of Interrogatory 3(f).

13 In addition, because the subject interrogatories were propounded approximately
14 eight months ago, Plaintiffs likely possess the information they seek to discover under
15 this interrogatory, such as Torrey Pines Bank records concerning Girardi & Keese's
16 monthly bank records. *See* Declaration of Paige Shen ISO *Ex Parte* Application for a
17 Continuance, at 13; *see, e.g.*, Defendants' responses to Plaintiffs' Requests for
18 Admissions, Set One; Defendants' supplementary Responses to Plaintiffs'
19 Interrogatories, Set Two; Defendants' further supplemental responses to Plaintiffs'
20 Request for Production, Set One.

21 **1. This Interrogatory Seeks Information That Is Not Relevant to**
22 **Proving Plaintiffs' Damages Relating To The HRT Litigation.**

23 It is important to distinguish what this case is and is not. This is a case of breach
24 of fiduciary duty and other related claims—not one of legal malpractice. Plaintiffs
25 have never alleged that Defendants' conduct caused them any harm arising from the
26 settlement achieved in the underlying HRT litigation for the 28 plaintiffs. Further,
27 Plaintiffs' have not shown that obtaining Defendant GK's financial information will
28 ever allow Plaintiffs to establish that they suffered any harm at all. Plaintiffs have not

1 alleged the harm, if any, they suffered as a result of the underlying settlement. In other
2 words, Plaintiffs allege that Defendants breached certain duties owed to Plaintiffs, but
3 fail to allege the losses suffered as a result of the alleged breach. The information
4 sought under this interrogatory will not assist Plaintiffs' in doing so.].

5 **INTERROGATORY NO. 4.**

6 **INTERROGATORY NO. 4:**

7 Describe each transfer of funds involved in making the INITIAL
8 PAYMENT to any of the HRT CLAIMANTS by providing:

- 9 (a) The date of the transfer;
- 10 (b) The amount of the transfer;
- 11 (c) The bank account from which the transfer was made;
- 12 (d) The bank account to which the transfer was made;
- 13 (e) The means by which the transfer was made (e.g., intrabank transfer,
14 wire transfer, withdrawal, deposit, check, etc.); and
- 15 (f) The name, address and telephone number of the person authorizing
16 the transfer.

17 ["INITIAL PAYMENT" was defined as "payments YOU distributed to the
18 HRT CLAIMANTS in or around August 2012 RELATING TO the HRT
LITIGATION."]

19 ["HRT CLAIMANTS" was defined as "the 139 persons identified as
20 'Girardi Claimants' in the HRT MASTER SETTLEMENT
AGREEMENT."]

21 **RESPONSE TO INTERROGATORY NO. 4:**

22 Defendants incorporate the General Objections as fully set forth herein.
23 Defendants object to this interrogatory on the grounds that it is overly broad
24 as to the scope of information sought, as well as unduly burdensome,
25 harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012
26 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance*
27 *Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009)
28 (stating that while contention interrogatories are permitted, they "are often
overly broad and unduly burdensome when they require a party to state
'every fact' or 'all facts' supporting identified allegations or defenses");
Bovarie v. Schwarzenegger, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22,
2011) (finding that requests seeking "each and every fact" are overly broad
and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June

1 15, 2011) (noting that contention interrogatories that ask for “each and every
2 fact or application of law to fact . . . may be held overly broad and unduly
burdensome”).

3 Defendants object that this interrogatory is vague and ambiguous. This
4 interrogatory also seeks information that is equally available to the
5 requesting party or are otherwise in the requesting party’s possession,
6 control, or custody. Defendants objects [sic] to the interrogatory to the
7 extent that this information is already in Plaintiffs’ possession due to
8 Defendants’ production of initial disclosures, Defendants’ response to
9 Plaintiffs’ request for production, and/or documents produced by or
10 available from third parties in response to Plaintiffs’ subpoenas. This
11 interrogatory is not reasonably limited in time or scope nor reasonably
12 calculated to lead to the discovery of admissible evidence. This
13 interrogatory calls for a legal conclusion. This interrogatory seeks counsel’s
14 evaluation and analysis of legal theories, thus further violating the attorney
15 work-product privilege. Defendants further object that this interrogatory is
16 cumulative and intended to harass. Defendants objects [sic] to this
17 interrogatory to the extent that it violates the attorney-client privilege and/or
18 work product doctrine and thereby asserts the aforementioned privileges.
19 Defendants have not completed discovery in this matter and reserve the right
20 to supplement this response.

21 Subject to and without waiving the foregoing objections, which are
22 expressly reserved, Defendants respond as follows:

23 (a) *On or about August 2012.*

24 (b) *Varying amounts.*

25 (c) *Girardi Keese client trust account.*

26 (d) *Not applicable. Checks were made out to HRT clients.*

27 (e) *Check.*

28 (f) *Insofar as “authorizing” means determining the gross amount of the
HRT plaintiffs’ share of the settlement: Hon. Edward A. Panelli, c/o
JAMS, 555 West Fifth Street, 32nd Floor; Los Angeles, CA 90013;
213-620-1133.*

[Emphasis added.]

A. Plaintiffs’ Contentions in Support of Compelling Further Response.

Interrogatory 4 seeks specific information concerning transactions involving the
Initial Payment to the approximately 140 HRT Claimants in 2012. GK’s vague and
cursory response is incomplete and evasive.

1 In particular, Interrogatory 4 seeks specific information – including dates,
2 amounts, account numbers and identification of recipients – for all transfers of funds
3 to the GK client trust account, and for all transfers (checks) from that account to the
4 HRT Claimants, used to make the Initial Payments. In addition, the interrogatory asks
5 GK to identify the person or persons who authorized each such transfer from the GK
6 client trust account, and authorized the making of the Initial Payments to the HRT
7 Claimants. That person was plainly not Justice Panelli, and GK’s redefining of the
8 term “authorizing” to mean “determining the gross amount of the HRT plaintiffs’
9 share of the settlement” is just another attempt at evasion.

10 Accordingly, GK should be compelled to provide the requested information for
11 each transfer to the client trust account and for each payment to the individual HRT
12 Claimants, all of which is in its possession and control.

13 For the reasons stated above, GK’s boilerplate objections to this interrogatory
14 should be overruled as having been waived and, in any case, as lacking merit.

15 **B. Defendant’s Contentions in Opposition to Compelling Further Response.**

16 Defendants adequately responded to Interrogatory No. 4 in its entirety.
17 According to Plaintiffs, however, Defendants’ response was insufficient because it did
18 not provide information regarding “specific...dates, amounts, account numbers and
19 identification of recipients ... for all transfers of funds to the GK client trust account,
20 and for all transfers (checks) from that account to the HRT Claimants, used to make
21 the Initial Payments.” Plaintiffs cannot offer their subjective interpretation on how
22 Defendants *should have* read Interrogatory 4. Defendants are not required to respond
23 with information that satisfies each and every possible interpretation, including
24 Plaintiffs’ subjective interpretation, of Interrogatory 4. Accordingly, Defendants
25 should not be faulted for Plaintiffs’ failure to request specifically the information they
26 seek to discover.

27 In addition, because the subject interrogatories were propounded approximately
28 eight months ago, Plaintiffs likely possess the information they seek to discover under

1 this interrogatory, such as Torrey Pines Bank records concerning Girardi & Keese's
2 monthly bank records. *See* Declaration of Paige Shen ISO *Ex Parte* Application for a
3 Continuance, at 13; *see, e.g.*, Defendants' responses to Plaintiffs' Requests for
4 Admissions, Set One; Defendants' supplementary Responses to Plaintiffs'
5 Interrogatories, Set Two.

6 **1. This Interrogatory Seeks Information That Is Not Relevant to**
7 **Proving Plaintiffs' Damages Relating To The HRT Litigation.**

8 It is important to distinguish what this case is and is not. This is a case of breach
9 of fiduciary duty and other related claims—not one of legal malpractice. Plaintiffs
10 have never alleged that Defendants' conduct caused them any harm arising from the
11 settlement achieved in the underlying HRT litigation for the 28 plaintiffs. Further,
12 Plaintiffs' have not shown that obtaining Defendant GK's financial information will
13 ever allow Plaintiffs to establish that they suffered any harm at all. Plaintiffs have not
14 alleged the harm, if any, they suffered as a result of the underlying settlement. In other
15 words, Plaintiffs allege that Defendants breached certain duties owed to Plaintiffs, but
16 fail to allege the losses suffered as a result of the alleged breach. The information
17 sought under this interrogatory will not assist Plaintiffs' in doing so.

18 **INTERROGATORY NO. 5.**

19 **INTERROGATORY NO. 5:**

20 Describe each transfer of funds involved in making the SECOND
21 PAYMENT to any of the HRT CLAIMANTS by providing:

- 22 (a) The date of the transfer;
- 23 (b) The amount of the transfer;
- 24 (c) The bank account from which the transfer was made;
- 25 (d) The bank account to which the transfer was made;
- 26 (e) The means by which the transfer was made (e.g., intrabank transfer,
27 wire transfer, withdrawal, deposit, check, etc.); and
- 28 (f) The name, address and telephone number of the person authorizing
the transfer.

1 ["SECOND PAYMENT" was defined as "payments YOU distributed to the
2 HRT CLAIMANTS in or around May through July 2013 RELATING TO
3 the HRT LITIGATION."]

4 **RESPONSE TO INTERROGATORY NO. 5:**

5 Defendants incorporate the General Objections as fully set forth herein.
6 Defendants object to this interrogatory on the grounds that it is overly broad
7 as to the scope of information sought, as well as unduly burdensome,
8 harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012
9 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance*
10 *Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009)
11 (stating that while contention interrogatories are permitted, they "are often
12 overly broad and unduly burdensome when they require a party to state
13 'every fact' or 'all facts' supporting identified allegations or defenses");
14 *Bovarie v. Schwarzenegger*, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22,
15 2011) (finding that requests seeking "each and every fact" are overly broad
16 and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June
17 15, 2011) (noting that contention interrogatories that ask for "each and every
18 fact or application of law to fact . . . may be held overly broad and unduly
19 burdensome").

20 Defendants object that this interrogatory is vague and ambiguous. This
21 interrogatory also seeks information that is equally available to the
22 requesting party or are otherwise in the requesting party's possession,
23 control, or custody. Defendants objects [*sic*] to the interrogatory to the
24 extent that this information is already in Plaintiffs' possession due to
25 Defendants' production of initial disclosures, Defendants' response to
26 Plaintiffs' request for production, and/or documents produced by or
27 available from third parties in response to Plaintiffs' subpoenas. This
28 interrogatory is not reasonably limited in time or scope nor reasonably
calculated to lead to the discovery of admissible evidence. This
interrogatory calls for a legal conclusion. This interrogatory seeks counsel's
evaluation and analysis of legal theories, thus further violating the attorney
work-product privilege. Defendants further object that this interrogatory is
cumulative and intended to harass. Defendants objects [*sic*] to this
interrogatory to the extent that it violates the attorney-client privilege and/or
work product doctrine and thereby asserts the aforementioned privileges.
Defendants have not completed discovery in this matter and reserve the right
to supplement this response.

Subject to and without waiving the foregoing objections, which are
expressly reserved, Defendants respond as follows:

- (a) *On or about May-July 2013.*
- (b) *Varying amounts.*
- (c) *Girardi Keese client trust account.*

1 (d) *Not applicable. Checks were made out to HRT clients.*

2 (e) *Check.*

3 (f) *Insofar as “authorizing” means determining the gross amount of the*
4 *HRT plaintiffs’ share of the settlement: Hon. Edward A. Panelli, c/o*
5 *JAMS, 555 West Fifth Street, 32nd Floor; Los Angeles, CA 90013;*
6 *213-620-1133.*

[Emphasis added.]

7 **A. Plaintiffs’ Contentions in Support of Compelling Further Response.**

8 Interrogatory 5 seeks specific information concerning the transactions involved
9 in making the Second Payment to the HRT Claimants in 2013, which GK represented
10 to be the “Final Payment.” GK’s vague and cursory responses are incomplete and
11 evasive.

12 In particular, Interrogatory 5 seeks specific information for all transfers to the
13 GK client trust account, and for all transfers (checks) from that account to the HRT
14 Claimants, used to make the Second Payments. It also requests the identity of the
15 person or persons who authorized these transactions, which, again, was not Justice
16 Panelli, who recently testified that he had no such authority. Sheehan Decl., 26,
17 Ex. 20, p. 93:14-25. (This information is particularly relevant in light of recently
18 disclosed bank records indicating that Defendants had depleted almost all of the
19 Settlement Funds prior to making this distribution to the HRT Claimants.)

20 Accordingly, GK should be compelled to provide the requested information for
21 each transfer to the client trust account and for each payment to the individual HRT
22 Claimants.

23 For the reasons stated above, GK’s boilerplate objections to this interrogatory
24 should be overruled as having been waived and, in any case, as lacking merit.

25 **B. Defendant’s Contentions in Opposition to Compelling Further Response.**

26 Defendants adequately responded to Interrogatory No. 5 in its entirety.

27 According to Plaintiffs, however, Defendants’ response was insufficient because it did
28 not provide information 5 seeks specific information for all transfers to the GK client

1 trust account, and for all transfers (checks) from that account to the HRT Claimants,
2 used to make the Second Payments. Plaintiffs cannot offer their subjective
3 interpretation on how Defendants *should have* read Interrogatory 5. Moreover,
4 Defendants are not required to respond with information that satisfies each and every
5 possible interpretation, including Plaintiffs' subjective interpretation, of Interrogatory
6 5.

7 In addition, because the subject interrogatories were propounded approximately
8 eight months ago, Plaintiffs likely possess the information they seek to discover under
9 this interrogatory, such as Torrey Pines Bank records concerning Girardi & Keese's
10 monthly bank records. *See* Declaration of Paige Shen ISO *Ex Parte* Application for a
11 Continuance, at 13; *see, e.g.*, Defendants' responses to Plaintiffs' Requests for
12 Admissions, Set One; Defendants' supplementary Responses to Plaintiffs'
13 Interrogatories, Set Two.

14 **1. This Interrogatory Seeks Information That Is Not Relevant to**
15 **Proving Plaintiffs' Damages Relating To The HRT Litigation.**

16 It is important to distinguish what this case is and is not. This is a case of breach
17 of fiduciary duty and other related claims—not one of legal malpractice. Plaintiffs
18 have never alleged that Defendants' conduct caused them any harm arising from the
19 settlement achieved in the underlying HRT litigation for the 28 plaintiffs. Further,
20 Plaintiffs' have not shown that obtaining Defendant GK's financial information will
21 ever allow Plaintiffs to establish that they suffered any harm at all. Plaintiffs have not
22 alleged the harm, if any, they suffered as a result of the underlying settlement. In other
23 words, Plaintiffs allege that Defendants breached certain duties owed to Plaintiffs, but
24 fail to allege the losses suffered as a result of the alleged breach. The information
25 sought under this interrogatory will not assist Plaintiffs' in doing so.

26 **INTERROGATORY NO. 6.**

27 **INTERROGATORY NO. 6:**

28 Describe each transfer of funds involved in making the THIRD PAYMENT

1 to any of the HRT CLAIMANTS by providing:

- 2 (a) The date of the transfer;
- 3 (b) The amount of the transfer;
- 4 (c) The bank account from which the transfer was made;
- 5 (d) The bank account to which the transfer was made;
- 6 (e) The means by which the transfer was made (e.g., intrabank transfer,
- 7 wire transfer, withdrawal, deposit, check, etc.); and
- 8 (f) The name, address and telephone number of the person authorizing
- 9 the transfer.

10 ["THIRD PAYMENT" was defined as "payments YOU distributed to the

11 HRT CLAIMANTS in or around August 2014 RELATING TO the HRT

LITIGATION."]

12 **RESPONSE TO INTERROGATORY NO. 6:**

13 Defendants incorporate the General Objections as fully set forth herein.

14 Defendants object to this interrogatory on the grounds that it is overly broad

15 as to the scope of information sought, as well as unduly burdensome,

16 harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012

17 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance*

18 *Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009)

19 (stating that while contention interrogatories are permitted, they "are often

20 overly broad and unduly burdensome when they require a party to state

21 'every fact' or 'all facts' supporting identified allegations or defenses");

22 *Bovarie v. Schwarzenegger*, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22,

23 2011) (finding that requests seeking "each and every fact" are overly broad

24 and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June

25 15, 2011) (noting that contention interrogatories that ask for "each and every

26 fact or application of law to fact . . . may be held overly broad and unduly

27 burdensome").

28 Defendants object that this interrogatory is vague and ambiguous. This

interrogatory also seeks information that is equally available to the

requesting party or are otherwise in the requesting party's possession,

control, or custody. Defendants objects [*sic*] to the interrogatory to the

extent that this information is already in Plaintiffs' possession due to

Defendants' production of initial disclosures, Defendants' response to

Plaintiffs' request for production, and/or documents produced by or

available from third parties in response to Plaintiffs' subpoenas. This

interrogatory is not reasonably limited in time or scope nor reasonably

calculated to lead to the discovery of admissible evidence. This

interrogatory calls for a legal conclusion. This interrogatory seeks counsel's

1 evaluation and analysis of legal theories, thus further violating the attorney
2 work-product privilege. Defendants further object that this interrogatory is
3 cumulative and intended to harass. Defendants objects [sic] to this
4 interrogatory to the extent that it violates the attorney-client privilege and/or
5 work product doctrine and thereby asserts the aforementioned privileges.
6 Defendants have not completed discovery in this matter and reserve the right
7 to supplement this response.

8 Subject to and without waiving the foregoing objections, which are
9 expressly reserved, Defendants respond as follows:

10 (a) *On or about August-October 2014.*

11 (b) *Varying amounts.*

12 (c) *Girardi Keese client trust account.*

13 (d) *Not applicable. Checks were made out to HRT clients.*

14 (e) *Check.*

15 (f) *Insofar as "authorizing" means determining the gross amount of the
16 HRT plaintiffs' share of the settlement: Hon. Edward A. Panelli, c/o
17 JAMS, 555 West Fifth Street, 32nd Floor; Los Angeles, CA 90013;
18 213-620-1133.*

19 [Emphasis added.]

20 **A. Plaintiffs' Contentions in Support of Compelling Further Response.**

21 Interrogatory 6 seeks specific information concerning the transactions involved
22 in the Third Payment to the HRT Claimants, which occurred in 2014, shortly after the
23 district court denied GK's motion to compel arbitration before Justice Panelli.

24 Dkt. No. 25. As before, GK's vague and cursory responses are incomplete and
25 evasive.

26 In particular, Interrogatory 6 seeks specific information for all transfers to the
27 GK client trust account, and for all transfers (checks) from that account to the HRT
28 Claimants, used to make the Third Payments. It also asks GK to identify the persons
authorizing these transfers and payments, which, again, was not Justice Panelli.

(Because GK had depleted the Settlement Funds by this time, the source of the funds
GK used when making the Third Payments is of particular interest.)

1 GK should be compelled to provide the requested information for each transfer
2 to the client trust account and for each payment to the individual HRT Claimants.

3 For the reasons stated above, GK's boilerplate objections to this interrogatory
4 should be overruled as having been waived, and, in any case, as lacking merit.

5 **B. Defendant's Contentions in Opposition to Compelling Further Response.**

6 Defendants adequately responded to Interrogatory No. 6 in its entirety.
7 According to Plaintiffs, however, Defendants' response was insufficient because it did
8 not provide information regarding specific information for all transfers to the GK
9 client trust account, and for all transfers (checks) from that account to the HRT
10 Claimants, used to make the Third Payments. Plaintiffs cannot offer their subjective
11 interpretation on how Defendants *should have* read Interrogatory 4. Moreover,
12 Defendants are not required to respond with information that satisfies each and every
13 possible interpretation, including Plaintiffs' subjective interpretation, of Interrogatory
14 6.

15 In addition, because the subject interrogatories were propounded approximately
16 eight months ago, Plaintiffs likely possess the information they seek to discover under
17 this interrogatory, such as Torrey Pines Bank records concerning Girardi & Keese's
18 monthly bank records. *See* Declaration of Paige Shen ISO *Ex Parte* Application for a
19 Continuance, at 13; *see, e.g.*, Defendants' responses to Plaintiffs' Requests for
20 Admissions, Set One; Defendants' supplementary Responses to Plaintiffs'
21 Interrogatories, Set Two.

22 **1. This Interrogatory Seeks Information That Is Not Relevant to**
23 **Proving Plaintiffs' Damages Relating To The HRT Litigation.**

24 It is important to distinguish what this case is and is not. This is a case of breach
25 of fiduciary duty and other related claims—not one of legal malpractice. Plaintiffs
26 have never alleged that Defendants' conduct caused them any harm arising from the
27 settlement achieved in the underlying HRT litigation for the 28 plaintiffs. Further,
28 Plaintiffs' have not shown that obtaining Defendant GK's financial information will

1 ever allow Plaintiffs to establish that they suffered any harm at all. Plaintiffs have not
2 alleged the harm, if any, they suffered as a result of the underlying settlement. In other
3 words, Plaintiffs allege that Defendants breached certain duties owed to Plaintiffs, but
4 fail to allege the losses suffered as a result of the alleged breach. The information
5 sought under this interrogatory will not assist Plaintiffs' in doing so.

6 **INTERROGATORY NO. 7.**

7 **INTERROGATORY NO. 7:**

8 Describe in detail all services performed by JUSTICE PANELLI
9 RELATING TO the HRT LITIGATION, including, without limitation, the
10 dates on which such services were performed and the nature and extent of
those services.

11 **RESPONSE TO INTERROGATORY NO. 7:**

12 Defendants incorporate the General Objections as fully set forth herein.
13 Defendants object to this interrogatory on the grounds that it is overly broad
14 as to the scope of information sought, as well as unduly burdensome,
15 harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012
16 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance*
17 *Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009)
18 (stating that while contention interrogatories are permitted, they "are often
19 overly broad and unduly burdensome when they require a party to state
20 'every fact' or 'all facts' supporting identified allegations or defenses");
Bovarie v. Schwarzenegger, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22,
2011) (finding that requests seeking "each and every fact" are overly broad
and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June
15, 2011) (noting that contention interrogatories that ask for "each and every
fact or application of law to fact . . . may be held overly broad and unduly
burdensome").

21 Defendants object that this interrogatory is vague and ambiguous. This
22 interrogatory also seeks information that is equally available to the
23 requesting party or are otherwise in the requesting party's possession,
24 control, or custody. Defendants objects [*sic*] to the interrogatory to the
25 extent that this information is already in Plaintiffs' possession due to
26 Defendants' production of initial disclosures, Defendants' response to
27 Plaintiffs' request for production, and/or documents produced by or
28 available from third parties in response to Plaintiffs' subpoenas. This
interrogatory is not reasonably limited in time or scope nor reasonably
calculated to lead to the discovery of admissible evidence. This
interrogatory calls for a legal conclusion. This interrogatory seeks counsel's
evaluation and analysis of legal theories, thus further violating the attorney
work-product privilege. Defendants further object that this interrogatory is

1 cumulative and intended to harass. Defendants objects [*sic*] to this
2 interrogatory to the extent that it violates the attorney-client privilege and/or
3 work product doctrine and thereby asserts the aforementioned privileges.
4 Defendants have not completed discovery in this matter and reserve the right
5 to supplement this response.

6 Subject to and without waiving the foregoing objections, which are
7 expressly reserved, Defendants respond as follows:

8 *Justice Panelli performed services as a neutral retired justice of the*
9 *California Supreme Court, including but not limited to, acting with the HRT*
10 *plaintiffs' authority to allocate the settlement sums among HRT plaintiffs,*
11 *conducting hearings with any plaintiffs who sought to discuss their*
12 *settlement amounts, requesting Defendants to hold back 6% of every*
13 *plaintiff's settlement until all lien issues were resolved, all consents had*
14 *been received, and the final accounting had been completed.*

15 [Emphasis added.]

16 **A. Plaintiffs' Contentions in Support of Compelling Further Response.**

17 Interrogatory 7 asks GK to describe in detail all services provided by
18 Justice Panelli related to the HRT Litigation, including the dates those services were
19 provided and the nature and extent of them.

20 According to the "Case Cost Report" GK produced after the filing of this case
21 (the "Cost Report"), GK charged the HRT Claimants \$100,000 for unspecified
22 services Justice Panelli purportedly rendered in connection with the HRT Litigation.
23 Sheehan Decl., ¶ 16, Ex. 9 (Case Cost Report), p. 8. Plaintiffs are entitled to know
24 what precisely he did in return for this compensation.

25 GK's one-sentence answer is incomplete, evasive and equivocal. It does not
26 disclose the dates on which Justice Panelli provided services or describe the nature of
27 the services provided, including when and how he allocated the Settlement Funds;
28 which HRT Claimants he met with; when and where he met with them; how much
time he spent with each of them; when, how and why he instructed GK to hold back
6% of the Settlement Funds; or who at GK he so instructed. GK's response is also
impermissibly equivocal because it uses the qualifier, "including but not limited to,"
which implies that Justice Panelli did more than what GK described. Plaintiffs are

entitled to know everything that Justice Panelli did in return for the \$100,000 he was paid, not just some of the things. GK should be compelled to provide the requested information and provide it without qualification.

For the reasons stated above, GK's objections to this interrogatory should be overruled as having been waived and, in any case, as lacking merit.

B. Defendant's Contentions in Opposition to Compelling Further Response.

Defendants adequately responded to Interrogatory No. 7 by fully describing the services performed by Justice Panelli and providing all relevant, non-privileged information in Defendants' possession. In addition, because the subject interrogatories were propounded approximately eight months ago, Defendants have likely provided the information sought under Interrogatory No. 7. In addition, because the subject interrogatories were propounded approximately eight months ago, Plaintiffs likely possess the information they seek to discover under this interrogatory. *See, e.g.*, Defendants' responses to Plaintiffs' Requests for Admissions, Set One; Defendants' supplementary Responses to Plaintiffs' Interrogatories, Set Two.

INTERROGATORY NO. 8.

INTERROGATORY NO. 8:

Describe in detail all services performed by JAMS RELATING TO the HRT LITIGATION, including, without limitation, the dates on which such services were performed and the nature and extent of those services.

RESPONSE TO INTERROGATORY NO. 8:

Defendants incorporate the General Objections as fully set forth herein. Defendants object to this interrogatory on the grounds that it is overly broad as to the scope of information sought, as well as unduly burdensome, harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009) (stating that while contention interrogatories are permitted, they "are often overly broad and unduly burdensome when they require a party to state 'every fact' or 'all facts' supporting identified allegations or defenses"); *Bovarie v. Schwarzenegger*, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22, 2011) (finding that requests seeking "each and every fact" are overly broad and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June 15, 2011) (noting that contention interrogatories that ask for "each and every

fact or application of law to fact . . . may be held overly broad and unduly burdensome”).

Defendants object that this interrogatory is vague and ambiguous. This interrogatory also seeks information that is equally available to the requesting party or are otherwise in the requesting party’s possession, control, or custody. Defendants objects [*sic*] to the interrogatory to the extent that this information is already in Plaintiffs’ possession due to Defendants’ production of initial disclosures, Defendants’ response to Plaintiffs’ request for production, and/or documents produced by or available from third parties in response to Plaintiffs’ subpoenas. This interrogatory is not reasonably limited in time or scope nor reasonably calculated to lead to the discovery of admissible evidence. This interrogatory calls for a legal conclusion. This interrogatory seeks counsel’s evaluation and analysis of legal theories, thus further violating the attorney work-product privilege. Defendants further object that this interrogatory is cumulative and intended to harass. Defendants objects [*sic*] to this interrogatory to the extent that it violates the attorney-client privilege and/or work product doctrine and thereby asserts the aforementioned privileges. Defendants have not completed discovery in this matter and reserve the right to supplement this response.

Subject to and without waiving the foregoing objections, which are expressly reserved, Defendants respond as follows:

JAMS provided services as a private alternative dispute resolution provider, including but not limited to, assisting with the provision of Justice Panelli’s services as a neutral retired justice of the California Supreme Court to allocate the settlement sums among HRT plaintiffs.

[Emphasis added.]

A. Plaintiffs’ Contentions in Support of Compelling Further Response.

Interrogatory 8 asks GK to describe in detail the services JAMS provided relating to the HRT Litigation. According to JAMS’ invoices, it was paid \$18,000 for services relating to the HRT Litigation, separate and apart from the \$100,000 Justice Panelli was allegedly paid. *See* Sheehan Decl., ¶¶ 16-17, Exs. 9 & 10.

GK’s one-sentence answer fails to meaningfully describe what JAMS did in return for this money, including exactly when and how it purportedly assisted Justice Panelli in allocating the Settlement Funds and who provided that assistance. It is also impermissibly equivocal, describing JAMS’ purported services as “including but not limited to,” leaving GK free to present evidence at trial beyond its answer. GK should

1 be compelled to provide the requested information and provide it without
2 qualification.

3 For the reasons stated above, GK's boilerplate objections to this interrogatory
4 should be overruled as having been waiving and, in any case, as lacking merit.

5 **B. Defendant's Contentions in Opposition to Compelling Further Response.**

6 Defendants adequately responded to Interrogatory No. 8 by describing the
7 services performed by JAMS and by providing all relevant, related, and non-
8 privileged information in Defendants' possession. In addition, because the subject
9 interrogatories were propounded approximately eight months ago, Defendants have
10 likely provided the information sought under Interrogatory No. 8. In addition, because
11 the subject interrogatories were propounded approximately eight months ago,
12 Plaintiffs likely possess the information they seek to discover under this interrogatory.
13 *See, e.g.,* Defendants' responses to Plaintiffs' Requests for Admissions, Set One;
14 Defendants' supplementary Responses to Plaintiffs' Interrogatories, Set Two.

15 **INTERROGATORY NO. 9.**

16 **INTERROGATORY NO. 9:**

17 Describe in detail all services performed by Gursev Schneider & Co., LLC
18 RELATING TO the HRT LITIGATION, including, without limitation, the
19 dates on which such services were performed and the nature and extent of
those services.

20 **RESPONSE TO INTERROGATORY NO. 9:**

21 Defendants incorporate the General Objections as fully set forth herein.
22 Defendants object to this interrogatory on the grounds that it is overly broad
23 as to the scope of information sought, as well as unduly burdensome,
24 harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012
25 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance*
26 *Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009)
27 (stating that while contention interrogatories are permitted, they "are often
28 overly broad and unduly burdensome when they require a party to state
'every fact' or 'all facts' supporting identified allegations or defenses");
Bovarie v. Schwarzenegger, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22,
2011) (finding that requests seeking "each and every fact" are overly broad
and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June
15, 2011) (noting that contention interrogatories that ask for "each and every

fact or application of law to fact . . . may be held overly broad and unduly burdensome”).

Defendants object that this interrogatory is vague and ambiguous. This interrogatory also seeks information that is equally available to the requesting party or are otherwise in the requesting party’s possession, control, or custody. Defendants objects [*sic*] to the interrogatory to the extent that this information is already in Plaintiffs’ possession due to Defendants’ production of initial disclosures, Defendants’ response to Plaintiffs’ request for production, and/or documents produced by or available from third parties in response to Plaintiffs’ subpoenas. This interrogatory is not reasonably limited in time or scope nor reasonably calculated to lead to the discovery of admissible evidence. This interrogatory calls for a legal conclusion. This interrogatory seeks counsel’s evaluation and analysis of legal theories, thus further violating the attorney work-product privilege. Defendants further object that this interrogatory is cumulative and intended to harass. Defendants objects [*sic*] to this interrogatory to the extent that it violates the attorney-client privilege and/or work product doctrine and thereby asserts the aforementioned privileges. Defendants have not completed discovery in this matter and reserve the right to supplement this response.

Subject to and without waiving the foregoing objections, which are expressly reserved, Defendants respond as follows:

Technology consulting, including but not limited to, building a database and network to manage HRT claims, records, review, and information.

[Emphasis added.]

A. Plaintiffs’ Contentions in Support of Compelling Further Response.

Interrogatory 9 asks GK to describe in detail the services Gursej Schneider & Co. (“Gursej”) provided relating to the HRT Litigation. According to the Cost Report, GK charged the HRT Claimants \$46,000 for Gursej’s services. Sheehan Decl., ¶ 16, Ex. 9, p. 8.

GK’s terse one-sentence answer is incomplete, evasive and equivocal. It fails to indicate the dates on which the services were provided. Nor does it describe the nature of the services provided in any detail, much less in sufficient detail to determine why such services were necessary, how they were related to the HRT Litigation, or why they were billed as costs instead of being included in GK’s attorney’s fees. It is also impermissibly equivocal. GK should be compelled to

1 provide the requested information and provide it without qualification.

2 For the reasons stated above, GK's boilerplate objections to this interrogatory
3 should be overruled as having been waived and, in any case, as lacking merit.

4 **B. Defendant's Contentions in Opposition to Compelling Further Response.**

5 Defendants adequately responded to Interrogatory No. 9 by describing the
6 services performed by Gursey Schneider & Co. and by providing all relevant, related,
7 and non-privileged information in Defendants' possession. In addition, because the
8 subject interrogatories were propounded approximately eight months ago, Defendants
9 have likely provided the information sought under Interrogatory No. 9. In addition,
10 because the subject interrogatories were propounded approximately eight months ago,
11 Plaintiffs likely possess the information they seek to discover under this interrogatory.
12 *See, e.g.*, Defendants' responses to Plaintiffs' Requests for Admissions, Set One;
13 Defendants' supplementary Responses to Plaintiffs' Interrogatories, Set Two.

14 **INTERROGATORY NO. 10.**

15 **INTERROGATORY NO. 10:**

16 Describe in detail all services performed by En Route Travel RELATING
17 TO the HRT LITIGATION, including, without limitation, the dates on
18 which such services were performed and the nature and extent of those
services.

19 **RESPONSE TO INTERROGATORY NO. 10:**

20 Defendants incorporate the General Objections as fully set forth herein.
21 Defendants object to this interrogatory on the grounds that it is overly broad
22 as to the scope of information sought, as well as unduly burdensome,
23 harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012
24 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance*
25 *Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009)
26 (stating that while contention interrogatories are permitted, they "are often
27 overly broad and unduly burdensome when they require a party to state
28 'every fact' or 'all facts' supporting identified allegations or defenses");
Bovarie v. Schwarzenegger, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22,
2011) (finding that requests seeking "each and every fact" are overly broad
and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June
15, 2011) (noting that contention interrogatories that ask for "each and every
fact or application of law to fact . . . may be held overly broad and unduly
burdensome").

Defendants object that this interrogatory is vague and ambiguous. This interrogatory also seeks information that is equally available to the requesting party or are otherwise in the requesting party's possession, control, or custody. Defendants objects [sic] to the interrogatory to the extent that this information is already in Plaintiffs' possession due to Defendants' production of initial disclosures, Defendants' response to Plaintiffs' request for production, and/or documents produced by or available from third parties in response to Plaintiffs' subpoenas. This interrogatory is not reasonably limited in time or scope nor reasonably calculated to lead to the discovery of admissible evidence. This interrogatory calls for a legal conclusion. This interrogatory seeks counsel's evaluation and analysis of legal theories, thus further violating the attorney work-product privilege. Defendants further object that this interrogatory is cumulative and intended to harass. Defendants objects [sic] to this interrogatory to the extent that it violates the attorney-client privilege and/or work product doctrine and thereby asserts the aforementioned privileges. Defendants have not completed discovery in this matter and reserve the right to supplement this response.

Subject to and without waiving the foregoing objections, which are expressly reserved, Defendants respond as follows:

Travel services, including but not limited to, arranging travel, booking hotels, and providing estimates for case-related travel expenses such as airfare and lodging.

[Emphasis added.]

A. Plaintiffs' Contentions in Support of Compelling Further Response.

Interrogatory 10 asks GK to describe in detail the services en Route Travel ("en Route") provided relating to the HRT Litigation. According to the Cost Report, GK charged the HRT Claimants approximately \$20,000 for "travel expenses" provided by en Route on June 1, 2012. Sheehan Decl., ¶ 16, Ex. 9, p. 8. The invoices GK produced do not support these expenses, which appear to have been incurred a year after the case had settled. *Id.*, ¶ 17, fn. 3, Ex. 11.

GK's short one-sentence answer is incomplete, evasive and equivocal. It does not, for example, disclose what travel arrangements were booked and who was traveling, when and to where they were traveling, and what tickets and accommodations en Route booked. It also includes the qualifier, "including but not limited to," which implies that the answer is not complete. GK should be compelled

1 to provide the requested information and provide it without qualification.

2 For the reasons stated above, GK's boilerplate objections to this interrogatory
3 should be overruled as having been waived and, in any case, as lacking merit.

4 **B. Defendant's Contentions in Opposition to Compelling Further Response.**

5 Defendants adequately responded to Interrogatory No. 10 by describing the
6 services performed by en Route Travel and by providing all relevant, related, and non-
7 privileged information in Defendants' possession. In addition, because the subject
8 interrogatories were propounded approximately eight months ago, Defendants have
9 likely provided the information sought under Interrogatory No. 10. In addition,
10 because the subject interrogatories were propounded approximately eight months ago,
11 Plaintiffs likely possess the information they seek to discover under this interrogatory.
12 *See, e.g.*, Defendants' responses to Plaintiffs' Requests for Admissions, Set One;
13 Defendants' supplementary Responses to Plaintiffs' Interrogatories, Set Two.

14 **INTERROGATORY NO. 11.**

15 **INTERROGATORY NO. 11:**

16 Describe in detail all services performed by Unlimited Copy Services
17 RELATING TO the HRT LITIGATION, including, without limitation, the
18 dates on which such services were performed and the nature and extent of
those services.

19 **RESPONSE TO INTERROGATORY NO. 11:**

20 Defendants incorporate the General Objections as fully set forth herein.
21 Defendants object to this interrogatory on the grounds that it is overly broad
22 as to the scope of information sought, as well as unduly burdensome,
23 harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012
24 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance*
25 *Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009)
26 (stating that while contention interrogatories are permitted, they "are often
27 overly broad and unduly burdensome when they require a party to state
28 'every fact' or 'all facts' supporting identified allegations or defenses");
Bovarie v. Schwarzenegger, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22,
2011) (finding that requests seeking "each and every fact" are overly broad
and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June
15, 2011) (noting that contention interrogatories that ask for "each and every
fact or application of law to fact . . . may be held overly broad and unduly
burdensome").

Defendants object that this interrogatory is vague and ambiguous. This interrogatory also seeks information that is equally available to the requesting party or are otherwise in the requesting party's possession, control, or custody. Defendants objects [sic] to the interrogatory to the extent that this information is already in Plaintiffs' possession due to Defendants' production of initial disclosures, Defendants' response to Plaintiffs' request for production, and/or documents produced by or available from third parties in response to Plaintiffs' subpoenas. This interrogatory is not reasonably limited in time or scope nor reasonably calculated to lead to the discovery of admissible evidence. This interrogatory calls for a legal conclusion. This interrogatory seeks counsel's evaluation and analysis of legal theories, thus further violating the attorney work-product privilege. Defendants further object that this interrogatory is cumulative and intended to harass. Defendants objects [sic] to this interrogatory to the extent that it violates the attorney-client privilege and/or work product doctrine and thereby asserts the aforementioned privileges. Defendants have not completed discovery in this matter and reserve the right to supplement this response.

Subject to and without waiving the foregoing objections, which are expressly reserved, Defendants respond as follows:

Copy services, including but not limited to, making copies of files, records, CDs, DVDs, VHS to DVD transfers, and binding.

[Emphasis added.]

A. Plaintiffs' Contentions in Support of Compelling Further Response.

Interrogatory 11 asks GK to describe in detail the services Unlimited Copy Services ("Unlimited Copy") provided relating to the HRT Litigation. According to the Cost Report, GK charged the HRT Claimants \$30,000 for unspecified services Unlimited Copy allegedly provided between March and April 2014, well after the HRT Litigation had settled and after this lawsuit had been filed. Sheehan Decl., ¶ 16, Ex. 9, p. 1.

GK's one-sentence answer is incomplete, evasive and equivocal. It does not state the dates when the services were provided; describe the nature of the services provided in sufficient detail to determine how they were necessary to the HRT Litigation; or describe the extent of the services (e.g., how many copies were made). GK should be compelled to provide the requested information and provide it without

1 qualification.

2 For the reasons stated above, GK's boilerplate objections to this interrogatory
3 should be overruled as having been waived and, in any case, as lacking merit.

4 **B. Defendant's Contentions in Opposition to Compelling Further Response.**

5 Defendants adequately responded to Interrogatory No. 11 by describing the
6 services performed by Unlimited Copy Services and by providing all relevant, related,
7 and non-privileged information in Defendants' possession. In addition, because the
8 subject interrogatories were propounded approximately eight months ago, Defendants
9 have likely provided the information sought under Interrogatory No. 11. In addition,
10 because the subject interrogatories were propounded approximately eight months ago,
11 Plaintiffs likely possess the information they seek to discover under this interrogatory.
12 *See, e.g.*, Defendants' responses to Plaintiffs' Requests for Admissions, Set One;
13 Defendants' supplementary Responses to Plaintiffs' Interrogatories, Set Two.

14 **INTERROGATORY NO. 12.**

15 **INTERROGATORY NO. 12:**

16 Describe in detail all services performed by The James Street Group, Inc.
17 RELATING TO the HRT LITIGATION, including, without limitation, the
18 dates on which such services were performed and the nature and extent of
those services.

19 **RESPONSE TO INTERROGATORY NO. 12:**

20 Defendants incorporate the General Objections as fully set forth herein.
21 Defendants object to this interrogatory on the grounds that it is overly broad
22 as to the scope of information sought, as well as unduly burdensome,
23 harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012
24 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance*
25 *Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009)
26 (stating that while contention interrogatories are permitted, they "are often
27 overly broad and unduly burdensome when they require a party to state
28 'every fact' or 'all facts' supporting identified allegations or defenses");
Bovarie v. Schwarzenegger, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22,
2011) (finding that requests seeking "each and every fact" are overly broad
and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June
15, 2011) (noting that contention interrogatories that ask for "each and every
fact or application of law to fact . . . may be held overly broad and unduly
burdensome").

Defendants object that this interrogatory is vague and ambiguous. This interrogatory also seeks information that is equally available to the requesting party or are otherwise in the requesting party's possession, control, or custody. Defendants objects [sic] to the interrogatory to the extent that this information is already in Plaintiffs' possession due to Defendants' production of initial disclosures, Defendants' response to Plaintiffs' request for production, and/or documents produced by or available from third parties in response to Plaintiffs' subpoenas. This interrogatory is not reasonably limited in time or scope nor reasonably calculated to lead to the discovery of admissible evidence. This interrogatory calls for a legal conclusion. This interrogatory seeks counsel's evaluation and analysis of legal theories, thus further violating the attorney work-product privilege. Defendants further object that this interrogatory is cumulative and intended to harass. Defendants objects [sic] to this interrogatory to the extent that it violates the attorney-client privilege and/or work product doctrine and thereby asserts the aforementioned privileges. Defendants have not completed discovery in this matter and reserve the right to supplement this response.

Subject to and without waiving the foregoing objections, which are expressly reserved, Defendants respond as follows:

Lien resolution services, including but not limited to, verifying and negotiating HRT clients' Medicare and Medicaid liens.

[Emphasis added.]

A. Plaintiffs' Contentions in Support of Compelling Further Response.

Interrogatory 12 asks GK to describe in detail the services that The James Street Group, Inc. and affiliates ("James Street") provided relating to the HRT Litigation. James Street provides Medicare lien resolution services, negotiating the settlement of liens arising from Medicare's payment of a beneficiary's medical expenses. Many, but by no means all, of the HRT Claimants were on Medicare and had liens against them. According to the Cost Report, GK charged the HRT Claimants approximately \$100,000 for services purportedly rendered by James Street. Sheehan Decl., ¶ 16, Ex. 9, pp. 18-21.

GK's one-sentence answer is incomplete, evasive and equivocal. For each lien that James Street settled, the interrogatory required GK to state the dates on which the services were provided; identify the HRT Claimant on whose behalf the services were

provided; and describe the nature and extent of those services. GK should be compelled to provide the requested information and provide it without qualification.

For the reasons stated above, GK's boilerplate objections to this interrogatory should be overruled as having been waived and, in any case, as lacking merit.

B. Defendant's Contentions in Opposition to Compelling Further Response.

Defendants adequately responded to Interrogatory No. 13 by describing the services performed by The James Street Group, Inc. and by providing all relevant, related, and non-privileged information in Defendants' possession. In addition, because the subject interrogatories were propounded approximately eight months ago, Defendants have likely provided the information sought under Interrogatory No. 12. In addition, because the subject interrogatories were propounded approximately eight months ago, Plaintiffs likely possess the information they seek to discover under this interrogatory. *See, e.g.*, Defendants' responses to Plaintiffs' Requests for Admissions, Set One; Defendants' supplementary Responses to Plaintiffs' Interrogatories, Set Two.

INTERROGATORY NO. 13.

INTERROGATORY NO. 13:

Identify and describe each cost that YOU incurred and paid RELATING to the HRT LITIGATION, including, without limitation, the amount of the payment; the date of the payment; the person or entity to which the payment was made; the nature of the cost incurred; and how the cost was related to the HRT LITIGATION.

RESPONSE TO INTERROGATORY NO. 13:

Defendants incorporate the General Objections as fully set forth herein. Defendants object to this interrogatory on the grounds that it is overly broad as to the scope of information sought, as well as unduly burdensome, harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009) (stating that while contention interrogatories are permitted, they "are often overly broad and unduly burdensome when they require a party to state 'every fact' or 'all facts' supporting identified allegations or defenses"); *Bovarie v. Schwarzenegger*, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22, 2011) (finding that requests seeking "each and every fact" are overly broad

1 and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June
2 15, 2011) (noting that contention interrogatories that ask for “each and every
3 fact or application of law to fact . . . may be held overly broad and unduly
burdensome”).

4 Defendants object that this interrogatory is vague and ambiguous. This
5 interrogatory also seeks information that is equally available to the
6 requesting party or are otherwise in the requesting party’s possession,
7 control, or custody. Defendants objects [*sic*] to the interrogatory to the
8 extent that this information is already in Plaintiffs’ possession due to
9 Defendants’ production of initial disclosures, Defendants’ response to
10 Plaintiffs’ request for production, and/or documents produced by or
11 available from third parties in response to Plaintiffs’ subpoenas. This
12 interrogatory is not reasonably limited in time or scope nor reasonably
13 calculated to lead to the discovery of admissible evidence. This
14 interrogatory calls for a legal conclusion. This interrogatory seeks counsel’s
evaluation and analysis of legal theories, thus further violating the attorney
work-product privilege. Defendants further object that this interrogatory is
cumulative and intended to harass. Defendants objects [*sic*] to this
interrogatory to the extent that it violates the attorney-client privilege and/or
work product doctrine and thereby asserts the aforementioned privileges.
Defendants have not completed discovery in this matter and reserve the right
to supplement this response.

15 Subject to and without waiving the foregoing objections, which are
16 expressly reserved, Defendants respond as follows:

17 *See initial disclosures previously provided to Plaintiffs.*

18 [Emphasis added.]

19 **A. Plaintiffs’ Contentions in Support of Compelling Further Response.**

20 As the Court is aware, the amount of costs GK charged the HRT Claimants has
21 been a moving target. In 2011, and again in 2013, GK represented to the HRT
22 Claimants that the HRT Litigation costs were 5.65% of the total settlement amount
23 (which equated to approximately \$980,000). Sheehan Decl., Exs. 1, 2 & 3. After
24 Plaintiffs filed this suit and the district court denied GK motion’s to compel arbitration
25 before Justice Panelli, GK advised the HRT Claimants that it had revised its costs
26 figure downward to 4.9% of the settlement amount (which equates to approximately
27 \$850,000). *Id.*, Ex. 7. GK has produced no documents in discovery that substantiate
28 either the 5.65% or the 4.9% cost figures, or that explain how they were derived.

1 The Cost Report was prepared in late August 2014 and produced in discovery.
2 It was never disclosed (nor any document with similar detail) to the HRT Claimants.
3 Notably, the costs listed in the Report total approximately \$685,000, and the report
4 shows that GK had incurred costs of only 2.2% of the total settlement amount at the
5 time the settlement was disclosed to the HRT Claimants in September 2011. The
6 Report also includes entries that are unsubstantiated, false, or fictitious. Sheehan
7 Decl., ¶ 16, Ex. 9.

8 Interrogatory 13 seeks a definitive itemization from GK of the specific costs it
9 incurred and paid relating to the HRT Litigation. GK's response refers Plaintiffs to its
10 "initial disclosures," which, regarding costs, consisted primarily of the Cost Report
11 and incomplete supporting documentation for some of the payments to vendors
12 identified in the Report. Sheehan Decl., ¶¶ 16-17, Ex. 9.

13 GK's response is an improper and deficient attempt to invoke the option under
14 Federal Rule of Civil Procedure 33 to produce "business records" in lieu of providing
15 a substantive answer. The Rule provides in relevant part:

16 If the answer to an interrogatory may be determined by examining,
17 auditing, compiling, abstracting, or summarizing a party's business
18 records (including electronically stored information), and if the
19 burden of deriving or ascertaining the answer will be substantially the
20 same for either party, . . . the responding party may answer by . . .
21 [¶] specifying the records that must be reviewed in sufficient detail to
22 enable the interrogating party to locate and identify them as readily as
23 the responding party

24 Fed. R. Civ. P. 33(d).

25 GK's reliance on Rule 33(d), however, is misplaced in a number of material
26 respect. *First*, the burden of reconstructing GK's history of costs is not "substantially
27 the same for either party," it is much greater for Plaintiffs. GK was involved in
28 incurring those costs, received the related services, and maintained and understood the
relevant records. In fact, Plaintiffs have tried, but have been simply unable to
accurately determine what costs GK incurred and paid from the records produced in
discovery to date.

1 *Second*, GK has not “specif[ie]d the records that must be reviewed in sufficient
2 detail to enable [Plaintiffs] to locate and identify them as readily as [GK] could.” Fed.
3 R. Civ. P. 33(d)(1). GK simply referred Plaintiffs to the entirety of its initial
4 disclosures, most of which had nothing to do with incurring or paying costs. *See*
5 *Rainbow Pioneer v. Hawaii-Nevada Inv. Corp.*, 711 F.2d 902, 906 (9th Cir. 1983)
6 (reference to “partnership books of accounts, banking accounts, records, computer
7 printouts, ledgers and other documents” insufficient); *O'Connor v. Boeing N. Am.,*
8 *Inc.*, 185 F.R.D. 272, 277-78 (C.D. Cal. 1999) (Chapman, M.J.) (“Rule 33(d) is not
9 satisfied by the wholesale dumping of documents.”); *State of Colorado v.*
10 *Schmidt–Tiago Construction Co.*, 108 F.R.D. 731, 735 (D. Col. 1985) (“The
11 appropriate answer when documents are to be used [under Rule 33(d)] is to list the
12 specific document provided the other party and indicat[e] the page or paragraphs that
13 are responsive to the interrogatory.”).

14 *Third*, the documents provided in the initial disclosures are redacted,
15 incomplete and unreliable, and do not come close to providing complete
16 information about the costs GK charged to the HRT Claimants. Sheehan
17 Decl., ¶¶ 15-17

18 In sum, GK was obligated to accurately account to Plaintiffs for what happened
19 to their Settlement Funds, including the amount and specifics of the litigation costs
20 incurred on their behalf. GK’s response – referencing Plaintiffs to the Cost Report
21 with its false entries and an incomplete collection of uninformative invoices – is
22 evasive and improper. GK should be compelled to provide the requested information
23 by producing a definitive itemization of costs incurred and paid that includes for each
24 such cost: the date it was incurred, the amount, the identity of the vendor, a
25 description of the services provided, and the justification for charging it as a cost to
26 the HRT Claimants.

27 For the reasons stated above, GK’s boilerplate objections to this interrogatory
28 should be overruled as having been waived, in any case, as lacking merit.

B. Defendant's Contentions in Opposition to Compelling Further Response.

Defendants adequately responded to Interrogatory No. 13 by directing Plaintiffs' to the information contained in Defendants' initial disclosures, which contained all relevant and non-privileged information in Defendants' possession at the time of the request. And because the subject interrogatories were propounded approximately eight months ago, Defendants have likely provided the information that Plaintiffs are currently attempting to compel. *See, e.g.*, Defendants' responses to Plaintiffs' Requests for Admissions, Set One; Defendants' supplementary Responses to Plaintiffs' Interrogatories, Set Two.

INTERROGATORY NO. 15.

INTERROGATORY NO. 15:

For each affirmative defense in YOUR ANSWER, including, without limitation, those set forth at paragraphs 51-73 of YOUR ANSWER:

- (a) State all facts upon which YOU base the affirmative defense;
- (b) State the names, addresses and telephone numbers of all persons who have knowledge of those facts;
- (c) Identify all DOCUMENTS SUPPORTING the affirmative defense; and
- (d) State the names, addresses and telephone number of the person who has or maintains control of each such DOCUMENT.

["YOUR ANSWER" was defined as Defendant's "Answer to Plaintiffs' Complaint filed in the present federal action entitled, *Judith Allen, et al., v. Girardi/Keese, et al.*, United States Court for the Central District of California, Case No. 14-CV-02721-MWF-FFM."]

RESPONSE TO INTERROGATORY NO. 15:

Defendants incorporate the General Objections as fully set forth herein. Defendants object to this interrogatory on the grounds that it is overly broad as to the scope of information sought, as well as unduly burdensome, harassing, and oppressive. *See Haggarty v. Wells Fargo Bank, NA.*, 2012 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012), citing *Mancini v. Insurance Corp. of New York*, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009) (stating that while contention interrogatories are permitted, they "are often overly broad and unduly burdensome when they require a party to state 'every fact' or 'all facts' supporting identified allegations or defenses");

1 *Bovarie v. Schwarzenegger*, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22,
2 2011) (finding that requests seeking “each and every fact” are overly broad
3 and burdensome); *S.E.C. v. Berry*, 2011 WL 2441706, at *4 (N.D. Cal. June
4 15, 2011) (noting that contention interrogatories that ask for “each and every
fact or application of law to fact . . . may be held overly broad and unduly
burdensome”).

5 Defendants object that this interrogatory is vague and ambiguous. This
6 interrogatory also seeks information that is equally available to the
7 requesting party or are otherwise in the requesting party’s possession,
8 control, or custody. Defendants objects [*sic*] to the interrogatory to the
9 extent that this information is already in Plaintiffs’ possession due to
10 Defendants’ production of initial disclosures, Defendants’ response to
11 Plaintiffs’ request for production, and/or documents produced by or
12 available from third parties in response to Plaintiffs’ subpoenas. This
13 interrogatory is not reasonably limited in time or scope nor reasonably
14 calculated to lead to the discovery of admissible evidence. This
15 interrogatory calls for a legal conclusion. This interrogatory seeks counsel’s
evaluation and analysis of legal theories, thus further violating the attorney
work-product privilege. Defendants further object that this interrogatory is
cumulative and intended to harass. Defendants objects [*sic*] to this
interrogatory to the extent that it violates the attorney-client privilege and/or
work product doctrine and thereby asserts the aforementioned privileges.
Defendants have not completed discovery in this matter and reserve the right
to supplement this response.

16 Subject to and without waiving the foregoing objections, which are
17 expressly reserved, Defendants respond as follows:

18 *Defendants object on the basis that the Court recently ordered Plaintiffs to*
19 *file an amended complaint and for Defendants to answer the complaint. As*
20 *such, Defendants’ instant answer is not the operative pleading under which*
21 *Defendants will assert their affirmative defenses.*

[Emphasis added.]

22 **A. Plaintiffs’ Contentions in Support of Compelling Further Response.**

23 Interrogatory 15 is a standard contention interrogatory that asks GK to identify
24 the bases for its affirmative defenses, which it has avoided doing to date.

25 “The purpose of contention interrogatories is to narrow the issues that will be
26 addressed at trial and to enable the propounding party to determine the proof required
27 to rebut the respondent’s position.” *Retiree Support Grp. of Contra Costa Cnty. v.*
28 *Contra Costa Cnty.*, 2014 WL 7206849, *3 (N.D. Cal. Dec. 18, 2014) (quotations

omitted). Thus, “[c]ourts generally approve of appropriately timed contention interrogatories as they tend to narrow issues, avoid wasteful preparation, and, it is hoped, expedite a resolution of the litigation.” *Roberts v. Heim*, 130 F.R.D. 424, 427 (N.D. Cal. 1989).

GK objected to Interrogatory 15 on the ground that it need not respond because an amended complaint had been filed. This is another disingenuous claim: GK alleged the exact same affirmative defenses in its Answer to the First Amended Complaint as it did in its Answer to the original Complaint. Dkt. Nos. 26 & 40.

GK should be compelled to provide a complete and non-evasive answer to this interrogatory without further delay, so that Plaintiffs know what defenses they must be prepared to refute at trial.

GK’s other objections have been waived and are meritless for the reasons stated above.

B. Defendant’s Contentions in Opposition to Compelling Further Response.

Defendants were entirely justified in waiting to receive Plaintiffs’ amended complaint, prior to responding to Interrogatory 15. Plaintiffs cite no authority in support of its position that Girardi & Keese’s response was insufficient, because Girardi & Keese alleged the same affirmative defenses in its Answer to the First Amended Complaint as it did in its Answer to Plaintiffs’ initial Complaint. And the “purpose” of contentions interrogatories is irrelevant to determining the sufficiency of Defendants’ response to Interrogatory 15. In effect, Plaintiffs fault Girardi & Keese for failing to anticipate its affirmative defenses to Plaintiffs’ allegations in the First Amended Complaint, *prior* to Girardi & Keese filing the operative Answer. And because the subject interrogatories were propounded approximately eight months ago, Defendants have likely provided the information that Plaintiffs are currently attempting to compel. *See, e.g.*, Defendants’ responses to Plaintiffs’ Requests for Admissions, Set One; Defendants’ supplementary Responses to Plaintiffs’ Interrogatories, Set Two.

1 **1. This Interrogatory Seeks Information That Is Not Relevant to**
2 **Proving Plaintiffs’ Damages Relating To The HRT Litigation.**

3 It is important to distinguish what this case is and is not. This is a case of breach
4 of fiduciary duty and other related claims—not one of legal malpractice. Plaintiffs
5 have never alleged that Defendants’ conduct caused them any harm arising from the
6 settlement achieved in the underlying HRT litigation for the 28 plaintiffs. Further,
7 Plaintiffs’ have not shown that obtaining Defendant GK’s financial information will
8 ever allow Plaintiffs to establish that they suffered any harm at all. Plaintiffs have not
9 alleged the harm, if any, they suffered as a result of the underlying settlement. In other
10 words, Plaintiffs allege that Defendants breached certain duties owed to Plaintiffs, but
11 fail to allege the losses suffered as a result of the alleged breach. The information
12 sought under this interrogatory will not assist Plaintiffs’ in doing so.

13 **V. VERIFICATIONS TO INTERROGATORIES.**

14 **A. Plaintiffs’ Contentions in Support of Compelling Verifications.**

15 Under Federal Rule of Civil Procedure 33, “[e]ach interrogatory *must*, to the
16 extent it is not objected to, be answered separately and fully *under oath*.” Fed. R.
17 Civ. P. 33(b)(3) (emphasis added). The verification form GK attached to its response
18 had the following three statements, only the first of which was checked:

19 [X] I am an agent of a party to this action, and am authorized to make this
20 verification for and on its behalf, and I make this verification for that
21 reason.

22 [] I am informed and believe and on that ground allege that the matters
23 stated in the foregoing document are true.

24 [] The matters stated in the foregoing document are true of my knowledge
25 except as to those matters which are stated on information and belief, and
as to those matters I believe them to be true.

26 By not checking the box next to either the second or third statement, GK has not
27 verified that its answers are true and correct “under oath.”

28 Three times Plaintiffs’ counsel requested GK to provide verifications to the

1 Interrogatories in compliance with Rule 33, and three times GK refused. Sheehan
2 Decl., ¶¶ 20, 23, Exs. 16, p. 2 & 17. Accordingly, the Court should order GK to
3 provide proper verifications of its answers to Set One.

4 **B. Defendant's Contentions in Opposition to Compelling Verifications.**

5 Plaintiffs' contentions in support of compelling verifications, above, contradict
6 their meet and confer efforts regarding the Interrogatories, Set One. In their discussion
7 in support of compelling verifications, Plaintiffs include the text of three paragraphs
8 which are purportedly those contained within the verification form that GK attached to
9 its response. But, curiously, despite filing two declarations in support of this Motion,
10 with a total of more than 400 pages of exhibits attached thereto, Plaintiffs fail to
11 include the verification form Defendants actually attached to the Interrogatories, Set
12 One. Instead, Plaintiffs include the text of the paragraphs purportedly contained on the
13 verification form and cite to Exhibits Nos. 16 and 17 of Sheehan Declaration. Neither
14 of these exhibits are consistent with the contentions Plaintiffs make above.

15 In Exhibit 16, Plaintiffs' meet and confer letter of March 3, 2015, in regard to
16 Defendants' responses to the Interrogatories, Set One, Defendant wrote as follows: "
17 The untimely responses are also facially deficient because Defendant neglected to
18 verify the responses...Defendant did not provide verifications for its answers."
19 Sheehan Declaration, Ex. 16, p. 2. Thus, Plaintiffs' contend in their letter that that
20 Defendants' "did not provide responses." That position directly contrasts the one
21 stated, *supra*: "[b]y not checking the box next to either the second or third statement,
22 GK has not verified that its answers are true and correct "under oath." From these
23 inconsistencies it is not clear what Plaintiffs request of the Court in regard to
24 Defendants' verification of its responses to the Interrogatories, Set 1. In Exhibit 17,
25 consisting of two emails from Plaintiffs to Defendants requesting verifications,
26 Plaintiffs wrote, "The responses to the interrogatories that were served on January 23,
27 2015, in addition to being untimely, were not verified." Again, the position Plaintiffs
28 assert in these emails contrasts that of the letter a few weeks later (Exhibit 16).

1 As noted previously, Plaintiffs did not cite to the verification form attached by
2 Defendants to the Interrogatories, Set One. Instead, Plaintiffs included the text of the
3 three paragraphs contained within a verification form, that was attached to another set
4 of Defendants' responses to Plaintiffs' discovery *not* the subject of the instant Motion.
5 Noticeably, such an error demonstrates how incredibly unnecessary and duplicative
6 the instant Motion is. Plaintiffs, themselves, have become confused by the set of
7 discovery at issue here.

8 Plaintiffs' omission reflects Plaintiffs' pattern of filing a motion to compel for
9 every set of discovery (not to mention, it also reflects their pattern to then use the
10 motion to compel as an opportunity to claim that Defendants are actually the ones
11 stone-walling and delaying litigation). That Plaintiffs' make contentions here
12 regarding a verification form that was not even attached to Defendants' responses at
13 issue here, further reflects the unnecessary nature of their arguments made in this
14 Motion. Clearly, this Motion serves no greater purpose than to burden the Court with
15 deciding issues that were properly subjects of Plaintiffs' previously filed Motions to
16 Compel, and to burden Defendants with burdensome, cumulative, and vexing motion
17 practice.

18 VI. SANCTIONS

19 A. Plaintiffs' Contentions in Support of Imposing Monetary Sanctions.

20 At the July 21, 2015 hearing on Plaintiffs' Motion to Compel regarding their
21 first set of Requests for Production, the Court warned GK:

22 [I]f we get another motion, I will look at it but I must admit that it
23 seems to me almost every single issue involved in this motion I
24 previously ruled upon on other motions. I don't want to rule upon the
25 same issues again. And if I do, then what I'll do is I will ask for
26 declarations regarding attorney's fees incurred in the prior motions,
27 and so we can add those up. We can get to a point perhaps where it
28 will be considered, I don't know, should we say appropriate for
counsel to deal with each other and work with discovery and get the
information to the Plaintiffs that they want or relevant to a claim or
defense, they're entitled to it and they're going to have it.

1 Shen Declaration, ¶ 14, p. 20:13-25.

2 GK has chosen to ignore the Court's admonishment, as evidenced by
3 the fact that this is the fourth motion to compel that Plaintiffs have been
4 forced to file since the July 21 hearing and yet they are still without relevant
5 documents that GK was ordered to produce and information it was required
6 to provide in answer to interrogatories.⁵

7 Under the Federal Rules, when a motion to compel discovery is granted, "the
8 court must, after giving an opportunity to be heard, require the party . . . whose
9 conduct necessitated the motion, party or attorney advising that conduct, or both, to
10 pay the movant's reasonable expenses incurred in making the motion, including
11 attorney's fees." Fed. R. Civ. P. 37(a)(5)(A).

12 As demonstrated above, GK's responses to the Interrogatories are incomplete,
13 evasive and reflect a complete lack of genuine effort to provide the requested
14 information. Moreover, the record before this Court makes clear that GK's deficient
15 responses are part of a broader pattern of discovery abuses that include the deliberate
16 disregard of discovery obligations, willful violations of court orders, and the failure to
17 meet and confer or to meet and confer in good faith. In light of such conduct, the
18 Court's imposition of monetary sanctions would be entirely appropriate. *See*
19 *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 763-64 (1980) ("Rule 37 sanctions must
20 be applied diligently both to penalize those whose conduct may be deemed to warrant
21 such a sanction, and to deter those who might be tempted to such conduct in the
22 absence of such a deterrent."); *Wingnut Films, Ltd. v. Katja Motion Pictures Corp.*,

24 ⁵ Those motions include: (1) Motion to Compel Withheld Documents and
25 Further Responses to Plaintiffs' Request for Production, Set One (granted July 21,
26 2015; Defendant's motion for review denied September 17, 2015); (2) Motion to
27 Compel Answers to Plaintiffs' Interrogatories, Set Two (granted September 17, 2015);
28 (3) Motion to Compel Answers to Plaintiffs' Interrogatories, Set Three (filed
September 4, 2015); and (4) Motion to Compel Responses and to Produce Documents
to Plaintiffs' Requests for Production, Set Two (filed September 16, 2015).

2007 WL 2758571, *16 (C.D. Cal. Sept. 18, 2007) (Hillman, M.J.) (“For the discovery system to function properly, the costs of resisting discovery must be sufficiently great so that the benefits to be gained from sharp or evasive discovery practices are outweighed by the sanctions imposed when those practices are discovered. It is not enough that an offender belatedly comply with its discovery obligations; ‘[i]f the only sanction for failing to comply with the discovery rules is having to comply with the discovery rules if you are caught, the diligent are punished and the less than diligent, rewarded.’”) (citation omitted); *In re Heritage Bond Litig.*, 223 F.R.D. 527, 530 (C.D. Cal. 2004) (Chapman, M.J.) (“The Court may, in deciding whether to grant a motion for sanctions, ‘properly consider all of a party’s discovery misconduct . . . , including conduct which has been the subject of earlier sanctions.’”) (citation omitted).

B. Defendants’ Contentions in Opposition to The Imposition of Monetary Sanctions.

Sanctions are not warranted here for three simple reasons: First, Defendants did not act in bad faith; second, Plaintiffs should not receive a windfall in light of their own inexcusable discovery delays and disregard of the discovery process; and third, Plaintiffs have suffered *no* prejudice from Defendants’ brief delay in responding to Plaintiffs’ Interrogatories, Set One.

Defendants did not act in bad faith in causing the brief delay concerning Plaintiffs’ Interrogatories, Set One. Rather, the brief delay was caused by Defendants’ attempt to adequately and thoroughly respond to the Interrogatories. The information requested was not readily available to Defendants, considering Plaintiffs’ eight month delay in propounding the Interrogatories, as well as the complex claims and defenses at play here.

Plaintiffs should not receive a windfall in light of their own inexcusable discovery delays and overall disregard of the discovery process. Plaintiffs filed this action in April 2014. Plaintiffs’ propounded the Interrogatories in December 2014,

1 *eight months* later, and brought the instant Motion in September 2015, almost *one and*
2 *a half years* later. Indeed, a lot has happened during that time: Plaintiffs have received
3 over 20,000 responsive documents to their requests for production; several key
4 individuals, including Justice Panelli, have been deposed; Defendants served its
5 supplemental responses to Plaintiffs' Interrogatories, Set Two; and, among other
6 things, Plaintiffs have obtained over 600 Torrey Pines Bank records, which were also
7 reviewed by Plaintiffs' financial expert. In other words, Plaintiffs have once again
8 resorted to motion practice to obtain information they already possess and have
9 possessed for some time. Plaintiffs should not receive a windfall for such disregard of
10 the discovery process and lack of professional diligence.

11 Similarly, Plaintiffs' inexcusable eight-month delay shows they suffered no
12 prejudice from Defendants' brief delay in serving its responses to the Interrogatories.

13 VII. CONCLUSION

14 A. Plaintiffs' Conclusion.

15 Plaintiffs respectfully request that the Court overrule GK's boilerplate
16 objections; compel GK to provide further answers to Interrogatories 3-13 and 15 and
17 proper verifications to all interrogatory answers; and impose appropriate monetary
18 sanctions for GK's continuing discovery abuses.

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B. Defendant's Conclusion.

For the reasons explained above, Defendants respectfully request that the Court deny Plaintiffs' Motion to Compel Further Responses to Interrogatories, Set One and for sanctions.

Dated: October 6, 2015

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